TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 235.

CHARLES D. CRESSWILL, GEORGE N. STONEY, GEORGE R. HUTTO, ET AL., PLAINTIFFS IN ERROR,

vs.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA, T. H. NICKERSON, D. J. BAILEY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED MARCH 23, 1910.

(22,074.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the State of Georgia, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, between Charles D. Cresswill, George N. Stoney, George R. Hutto, N. B. Williamson, Columbus J. Smith, Fred M. Cohen, Boss W. Warren, George W. Brown, James W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee; and Grand Lodge Knights of Pythias of Georgia, T. H. Nickerson, D. J. Bailey, John P. Ross, William H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and George T. Cann; wherein was drawn in question a right, title and privilege set up and held under a statute of the United States, and under the Constitution of the United States and the Fourteenth Amendment thereof, and a decision was against said right, title and privilege, so set up and held, a manifest error hath happened to the great damage of the said Charles D. Cresswill, George N. Stoney, George R. Hutto, N. B. Williamson, Columbus J. Smith, Fred M. Cohen, Boss W. Warren, George W. Brown, James W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and

2 speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the Fourteenth day of March, in the year of our Lord one thousand nine hundred and ten.

[Seal U. S. Circuit Court, N. D. Georgia.]

O. C. FULLER,
Clerk of the Circuit Court of the United States for the Northern District of Georgia.

Allowed by
J. H. LUMPKIN,
Acting Presiding Justice Supreme Court of Georgia.

Filed in office March 14, 1910.
Z. D. HARRISON,
Clk S. C. Ga.

1—235

3 Supreme Court of the State of Georgia.

CHAS. D. CRESWILL, GEO. R. HUTTO, N. B. WILLIAMSON, COLUMBUS J. SMITH, Fred M. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garrett Taylor, and Lucius L. Lee, Plaintiffs in Error,

vs.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA, T. H. NICKERSON, D. J. Bailey, John P. Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantly, and Geo. T. Cann, Defendants in Error.

To the Grand Lodge Knights of Pythias of Georgia, T. H. Nickerson, D. J. Bailey, John P. Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley, and Geo. T. Cann:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within 30 days from the date hereof, pursuant to writ of error, filed in the clerk's office of the Supreme Court of the State of Georgia, wherein *these* Chas. D. Creswill, Geo. R. Hutto, N. B. Williamson, Columbus J. Smith, Fred M. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee are plaintiffs in errors, and you are the defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

4 Witness, the Honorable J. H. Lumpkin, Acting Presiding Justice of the Supreme Court of the State of Georgia.
This 14th day of March, 1910.

J. H. LUMPKIN,
Acting Presiding Justice.

Copy of the within citation received, and service acknowledged, this — day of March, 1910.

——, ——.

Served the above citation personally on Hamilton Douglas, as Attorney of Record for the Supreme Lodge Knights of Pythias, for the Grand Lodge Knights of Pythias of Georgia, & for T. H. Nickerson, D. J. Bailey, John P. Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley & Geo. T. Cann by delivering a true copy of the above citation to the said Douglas.
This 14th day of March, 1910.

C. W. MANGUM, *Sheriff.*
By J. H. OWEN,
Deputy Sheriff of Fulton County, Ga.

Filed in office M'ch 14, 1910.
Z. D. HARRISON,
C. S. C. Ga.

Affidavit.

On the 14th day of March, 1910, in person appeared, C. L. Pettigrew, attorney of record for Chas. D. Creswell, Geo. R. Hutto, N. B. Williamson, Columbus J. Smith, Fred M. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garret Taylor and Lucius L. Lee, in the Supreme Court of the State of Georgia, before me the subscribing Notary Public of Fulton County, Georgia, and makes oath that he delivered a true copy of the within and above citation personally to Hamilton Douglas as attorney of record in the Supreme Court of the State of Georgia for the Supreme Lodge Knights of Pythias and for the Grand Lodge Knights of Pythias of Georgia and for T. H. Nickerson, D. J. Bailey, Jno. P. Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and Geo. T. Cann.

C. L. PETTIGREW.

Sworn to and subscribed before me this 14th day of March, 1910.

[Seal of Paul H. Dobbins, Notary Public, Fulton County, Ga.]

[SEAL.]

PAUL H. DOBBINS,
N. P., Fulton Co., Ga.

Filed in office M'ch 14th, 1910.
Z. D. HARRISON,
Clk S. C. Ga.

5 Supreme Court of the State of Georgia.

CHAS. D. CRESWILL, GEO. H. HUTTO, N. B. WILLIAMSON, COLUMBUS J. Smith, Fred M. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garrett Taylor, and Lucius L. Lee, Plaintiffs in Error,

vs.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA, T. H. NICKERSON, D. J. Bailey, John P. Ross, Wm. D. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley, and Geo. T. Cann, Defendants in Error.

To the Honorable J. H. Lumpkin, acting Presiding Justice of the Supreme Court of the State of Georgia:

The petition of Chas. D. Creswill, Geo. R. Hutto, N. B. Williamson, Columbus J. Smith, Fred M. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee respectfully shows:

That heretofore, to wit, upon the 10th day of June 1908 there was tried in the Superior Court of the County of Fulton, in the State of Georgia, a case in which the Grand Lodge Knights of Pythias of Georgia, T. H. Nickerson, D. J. Bailey, John P. Ross, Wm. H.

Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and Geo. T. Cann were plaintiffs and your petitioners were defendants.

The petition of the plaintiffs below, the defendants here, in substance alleged:

1. On February 19th, 1864, in Washington, D. C., Justice H. Rathbone and his associate- organized a society for the ultimate object of Friendship, Charity and Benevolence, known as the "Knights of Pythias" that it has been so known ever since as the Order of the Knights of Pythias. That the plan of organization was the organizing of subordinate lodges in various States and towns in the United States, and in pursuance of that plan subordinate lodges were organized. The subordinate lodges throughout the country organized and submitted themselves to the jurisdiction and control of the central party known as the Grand Lodge Knights of Pythias, of the District of Columbia; that from time to time thereafter subordinate lodges were organized within the territories of the several States, known as Grand Lodges of the Order of Knights of Pythias. That with the growth of the Order, and pursuant to its constitution and laws, the several Grand Lodges organized a Supreme Lodge Knights of Pythias for the United States, to which Supreme body of the Order was submitted control over the Grand Lodges of the Order throughout the United States, and by it rules and regulations were adopted and promulgated for the government of the Order of Knights of Pythias.

6

2. That in accordance with the Act of Congress entitled "an Act to provide for the creation of corporations in the District of Columbia by general law" approved March 5th, 1870, said Order was incorporated as a beneficial association on August 5th, 1870, under the name and style of "The Supreme Lodge Knights of Pythias." The said certificate of incorporation was amended on October 5th, 1875, and again on May 24th, 1882, by virtue of the said Act. By Act of Congress approved June 29th, 1894, the officers and members of the Supreme Lodge Knights of Pythias and their successors were incorporated under the name of "The Supreme Lodge Knights of Pythias."

7

3. Pursuant to the laws of said order subordinate lodges were organized in various cities in the State of Georgia, and on March 20th, 1870, the Grand Lodge Knights of Pythias of Georgia was instituted by a charter from the Supreme Lodge Knights of Pythias. That annual conventions of the Grand Lodge have been held every year since said date.

4. By the laws of the Supreme Lodge Knights of Pythias the Grand Lodge Knights of Pythias of Georgia has full power to insitute and to charter subordinate lodges in the State, revoke such charters, and exercise within the State of Georgia all power and authority for the government of subordinate lodges, to protect the same from imposition, and to direct the subordinate lodges and members for the accomplishment of the purposes and object of said Order. There are now in the State of Georgia more than two hundred subordinate lodges of the Knights of Pythias, with a membership of more than twelve thousand men, and the petition is brought

in the right of the Grand Lodge Knights of Pythias of Georgia for the use and benefit of the aforesaid subordinate lodges and members whose names it is impossible to set out.

5. The petitioners named are charged with the administration of the affairs of the said Grand Lodge Knights of Pythias, and sue for themselves, the Grand Lodge, and all their associates.

8

6. Said Knights of Pythias is a secret organization, having signs, passwords and emblems, intended solely for the use of the members of the said Order among themselves, for the purpose of introduction and identification, and otherwise accomplishing the objects of the said Order. That said Order has been known and called "Order of Knights of Pythias," and its members have been known and called "Knights of Pythias," or "Pythian Knights;" that Pythias is a distinctive word in the name of said Order which does cardinally distinguish it from other fraternal orders in the State and in the United States, and that petitioners and associates have exclusive right to the use of the title aforesaid and to the word "Pythias," and the phrase "Knights of Pythias."

7. That the defendants (Plaintiffs in Error here) have filed a petition to the Superior Court of Fulton County for themselves and their associates to be incorporated under the name and style of "The Grand Lodge Knights of Pythias North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia," a copy of which petition is attached as exhibit. Petitioners aver that defendants have never been authorized to associate themselves together or make application for a charter by the Supreme Lodge of the Knights of Pythias, or by your petitioners, and they have never been authorized by said Supreme Lodge or Grand Lodge to use the name and style of the said Order of Knights of Pythias, or any imitation of petitioners' name that defendants had never been members of plaintiffs' said organization or of any subordinate lodge instituted by *its* authority. The exhibit attached to this paragraph shows that Plaintiffs in Error (defendants below) asked incorporation under the following rights:

9

(1) "Petitioners are the Grand Lodge officers of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia.

(2) Petitioners desire for themselves, associates and successors to be incorporated under the name and style of "Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia." Paragraph six of the said charter declares "said corporation shall be governed by the laws of the Knights of Pythias aforesaid, to wit, its subordinate and the existing laws of the said Grand Lodge, and such further rules and regulations as it may adopt at its session that are not in conflict with the laws of the said State."

8. That the name and style in the defendants' petition for incorporation is substantially identical with the name and style of petitioners.

9. Petitioners show that said defendants have no right or au-

thority to adopt the name set out in their petition for incorporation, that the use of said name would be a wrong and injury
10 to petitioners, and a fraud upon your petitioners and the public. Petitioners show that the defendants and their associates have organized a voluntary association under the name and style as set out in their petition and avowed their intention of continuing to use that name, and they have organized subordinate lodges under that name and caused themselves to be denominated Knights of Pythias. Petitioners aver that the defendants organized and used their name long after petitioners had become the owner of and had used its name, and that the defendants have never been authorized by the petitioners' association to use said name or any other title which is a colorable imitation of the name.

10. Petitioners show that the name used by defendants is substantially identical with the name and style of your petitioners, and that defendants have no right to use such name; that it is substantially identical and a colorable imitation of petitioners' name. That without any authority from petitioners, defendants are using the identical emblem and insignia as those of your petitioners; that such use is a wrong and injury to your petitioners and the public.

11. That petitioners are engaged in a work of Charity and Benevolence, in the doing of which they have spent, in the aggregate, large sums of money, and that in the prosecution of their object they are entitled to the exclusive use of the name.

Wherefore (1) that defendants be enjoined from prosecuting their petition for incorporation and from being incorporated
11 under the name and style "The Grand Lodge Knights of Pythias" or any other name embracing the word "Pythias" in conjunction with "Knights of." (2) That the defendants be enjoined from further using in their voluntary association the name of "Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia," or from any other colorable imitation of the name of your petitioners, the Grand Lodge Knights of Pythias of Georgia; that they be enjoined from instituting subordinate lodges under the designation "Knights of Pythias" or any other name which is a colorable imitation thereof. (3) For such other and further relief as may be just.

On the hearing the Supreme Lodge Knights of Pythias was made a party plaintiff, and it adopted the averments and prayers of the original petition.

There was a demurrer filed by the defendants below, both general and special, but the demurrer was never formally passed on by the Court.

The defendants below, by their answer, neither affirmed nor denied the historical part of the plaintiffs' petition. They denied that their Order had sprung from plaintiffs' Order. They admitted that they had received no authority from plaintiffs' Order to organize lodges. They denied that their name is identical with the name of plaintiffs' Order, or a colorable imitation of the same. They set up that the Supreme Lodge Knights of Pythias of North America,

South America, Europe, Asia, and Africa was incorporated
12 on October 10th, 1889, by virtue of an Act of Congress of the United States, approved May 5th, 1870, and organized under said charter lodges throughout the United States and other countries. That said corporation was re-incorporated on the 14th of December, 1903, in order to more perfectly comply with the laws of the various States relative to fraternal societies doing business therein, which re-incorporation was under the name of "Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia." That this incorporation has been in active work ever since its organization in 1889, and has extended itself over the United States in different countries of the world, and has established subordinate lodges, and that the sole purpose of defendants in asking incorporation under the laws of Georgia is to form a more perfect union among the subordinate lodges with a governing head which would have authority and be amenable to the laws of Georgia and be able to better enforce obedience among its several members and subordinate lodges; that its signs, symbols, emblems, and other paraphernalia have been adopted by the said corporation honestly and fairly and it has a perfect right thereto, and that its membership in the United States numbers 80,747, and in Georgia, 11,805. By amendment defendants show that the Order of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia was established by and among colored people alone, which includes the negro race and the asiatic races, and is organized for the purpose of disseminating Friendship, Charity and Benevo-
13 lence. That the Supreme Lodge of the said Order was organized on October 10th, 1889, under the Act of incorporation in the District of Columbia by Act of Congress of the United States approved May 5th, 1870, and the said corporation as organized began immediately, and kept on continuing organizing branches in different states of the United States until its reorganization, without breaking its continuity under Act of Congress, December 14th, 1903, under the name of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, and has established branch lodges covering many States, to wit, Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Iowa, Indian Territory, Kansas, Kentucky, Louisiana, Massachusetts, Rhode Island, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma Territory, Eastern Pennsylvania, Western Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

These organizations have been in working order for many years, beginning with Mississippi, March 26th, 1889, that the said Order in the jurisdiction of Georgia was organized and began work in June 1886 and has continued ever since.

That this Order has never attempted to confuse its Order with that represented by the plaintiffs, and as matter of fact there never has been any confusing or mistaking of one of the plaintiffs' Order for that of the defendants, the members of the two Orders belonging to different races. There never has been an application for
14 membership by a Caucasian in the defendants' Order. There is no member of the negro race in the Order represented by

the plaintiffs. There has been nothing done by the defendants in order to lead the public to suppose they were the Order represented by the plaintiffs. That all official proceedings of said defendants' Order distinctly notified the public that this Order was not the same as the plaintiffs' Order; that no one could have thought the two Orders were the same, or that one might become a member of one Order when they joined the other; that the complete operation of the two Orders is absolutely different, one being confined to the white race, the other to the colored race. That the Order represented by the defendants has been in active operation enjoying all rights and privileges of the organization since March 26th, 1880, and under the jurisdiction of the Supreme Lodge as chartered since October 10th, 1889, publicly and to the knowledge of all mankind, and it would be inequitable and unjust for the plaintiffs to maintain this suit on account of the lapse of time, and defendants plead the plaintiffs' laches in bar of any equitable relief.

The case came on for a hearing on the motion for preliminary injunction. The Court below granted the following judgment: "After hearing the evidence and argument of counsel it is ordered that the injunction be denied and the restraining order heretofore granted be revoked." The plaintiffs below brought the case by bill of exceptions to the Supreme Court of Georgia. The judg-
15 ment of the Court below was by this Court affirmed with direction.

Grand Lodge Knights of Pythias vs. Creswill, 128th Ga. 775.

In this decision all the questions of law or fact were left open to be determined on the final trial of the case; the only question being settled was the question of proper parties.

The case coming on for trial in the court below, a verdict was rendered in favor of the plaintiffs against the defendants, and a decree was entered as prayed for by the plaintiffs. The verdict of the jury was in the form of questions and answers as follows:

(1) Is the proposed corporate name of the defendants an infringement on the name of the plaintiffs' association?

A. Yes.

(2) If it is such an infringement, would it affect or injure the plaintiffs in any property right? If so, what?

A. Yes, in name.

(3) If so, is there any fraudulent purpose or design to so infringe?

A. Yes, there is.

(4) Are any of the emblems or insignia of the defendants the same as those used by the plaintiffs, and if so, does such use injure plaintiffs in any property right?

A. Yes.

(5) Has the plaintiff acquiesced in the use by the defendants of the name and insignia, and if so, how long?

A. No.

(6) Is it true that since the organization of the Order represented by petitioners and its introduction into the State of Georgia

it has been called "The Order of Knights of Pythias," and
16 that its members have been known as "Knights of Pythias," or "Pythian Knights" indifferently?

A. Yes.

(7) Is it true that Pythias is a distinctive word in the name of the Order represented by petitioners which ordinarily distinguishes it from the name and style of other fraternal Orders in the State of Georgia and the United States?

A. Yes.

(8) Is it true that the name set forth in defendants' petition for incorporation is substantially identical with the name and style of your petitioners, the Grand Lodge Knights of Pythias of Georgia?

A. Yes.

(9) Is it true that the name set forth in defendants' said petition for incorporation is a colorable imitation of the name and style of your petitioners, the Grand Lodge Knights of Pythias of Georgia?

A. Yes.

(10) Is it true that the use by the defendants and their associates of the name which they are seeking incorporation would work a fraud upon your petitioners and their associates and the public in that the name under which defendants propose to incorporate is a colorable imitation of the name of petitioners?

A. Yes.

(11) Is it true that defendants can not show any organization of any kind until 1880 and until long after the Grand Lodge Knights of Pythias of petitioners was organized in the State of Georgia?

A. Yes.

(12) Is it true that the use of the word "Pythias" im-
17 mediately in conjunction with the words "Knights of" in the name under which defendants and their associates are seeking incorporation is a colorable imitation of the name of your petitioners, the Grand Lodge Knights of Pythias of Georgia?

A. Yes.

(13) Is it true that the defendants, the Supreme Lodge of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, are working emblems and insignia identical in color, design and lettering with the emblems and insignia of petitioners, the Grand Lodge Knights of Pythias, and is it true that the use and working of such insignia and emblems work a fraud upon either petitioners or their associates or the public?

A. Yes.

(14) Have the defendants used the name Knights of Pythias or the letters "K. of P." without any affix or suffix thereto?

A. Yes.

The defendants below duly made their motion for a new trial upon forty grounds, the following of which are set out in full, and your petitioners show that each of said grounds set out below raised and presented a Federal question.

Ground No. 19, motion for new trial: "Because the answers of

the jury to questions 1, 2, 3, 4, 8, 9, 12 and 13 are contrary to law, contrary to the rights of the defendants under the Act of Congress of 1870, and under their charter right granted under said Act of Congress and of the authority conferred thereby." The Federal question raised in said ground being whether the charter
18 right granted to the defendant association, the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia, under and by virtue of whose rights the defendants claimed, were not violated by the answers of the jury to the questions enumerated, under the evidence in this case.

The 20th ground of motion for new trial is as follows:

"Because the answers of the jury to questions 1, 2, 3, 4, 8, 9, 10, 12 and 13 are contrary to law and to the Constitution of the United States and the 14th amendment thereto, and the following clauses thereof: "nor shall any State deprive any person of life, liberty or property without due process of law," and "nor deny to any person within its jurisdiction equal protection of the law", inasmuch as all evidence upon — these answers are founded is illegal evidence and such as applies entirely to the exclusion of defendants as a colored race from the organization and maintenance of an association not otherwise called in question as contrary to law." This ground raised and presented a Federal question, viz., whether the evidence consisting of racial repugnance of the members of the plaintiff association toward defendant association, this being all the material evidence, and upon which these answers are founded, is not illegal evidence, and therefore, no evidence, and therefore, whether the answers and verdict founded on such evidence does not violate the fourteenth amendment to the Constitution of the United States, and the following clauses thereof: "Nor shall
19 any State deprive any person of life, liberty or property, without due process of law", and "nor deny to any person within its jurisdiction the equal protection of the law."

The 21st ground of the motion for new trial was as follows: "that the Court erred in its charge to the jury when stating defendants' contentions in not stating that the defendants claimed their right under a charter granted by the authority of the Act of Congress dated May 5th, 1870, under which defendants and such like associations were chartered by authority of the Act of Congress." Your Petitioner says that this ground raised and presented a Federal question, viz., whether the Court did not ignore a title, right, privilege and immunity specially set up and claimed by defendants under a statute and authority of the United States, to wit, under the Act of Congress of May 5th, 1870, and the incorporation of the Supreme Lodge of defendants' Order under which defendants claim their right.

The 27th ground of the motion for new trial is as follows: "because the Court erred in charging the jury "fraud upon the part of the defendants would be a use of the name of the plaintiffs or an infringement thereof with an intent to make the impression upon the general public that their association and the plaintiffs' association were the same general Order," in that there can not be any

fraud unless there is an injury done, and the said impression upon
the public can only do injury by depriving plaintiffs of
20 members who, instead of joining it would join defendants,
by such impression upon the general public that would draw business, membership or other advantage to the defendants which would be otherwise intended for the plaintiffs, or that the impression upon the general public would damage the plaintiffs because the defendants belonged to the negro race. Further because, if the intent to make the impression upon the general public that the defendants' association and the plaintiffs' association were of the same general Order constitutes a fraud upon the plaintiffs without any property rights involved and without other injury but the mere fact of their identity, then this charge deprives defendants of the equal protection of the laws as guaranteed to them by the 14th amendment to the Constitution of the United States." Your petitioner says that this ground raised and presented a Federal question, viz., whether the intent to make the impression upon the general public that defendants' association and plaintiffs' association were of the same general Order constitutes a fraud upon the plaintiffs without any property right involved and without any other injury but the mere fact of identity, and whether a charge embodying this doctrine, and as the charge quoted, did not deprive the defendants of the equal protection of the law as guaranteed to them by the 14th amendment of the Constitution of the United States.

The 28th ground of the motion for new trial is as follows: "Because the court erred in charging the jury 'if the association
21 first appropriating and using the name have a clear right to
the use of the same, its subsequent use by another association knowing of this right would be presumed by the law to be fraudulent' in that because the name of defendants is not the same as the name of the plaintiffs and there is no evidence of the injury by the defendants or any clear right on the part of the plaintiffs to use of its name, and in that this charge ignores the defendants' right to use its name conferred upon it by authority of the Act of Congress, and that such use would be a fraud. Your petitioner shows that this ground raised and presented a Federal question, viz: whether this charge ignored and instructed the jury against, and in effect decided against the defendants' right to use the name conferred on defendants' Order by Act of Congress of May 5th, 1870, and whether instructing the jury that such use would be presumed to be fraudulent did not charge the jury against, and decided against, a right, title, privilege and immunity specially set up and claimed by defendants under said Act of Congress, and also whether such charge did not violate defendants' right under said charter and did not violate defendants' right under article 4, section one of the Constitution of the United States which declares "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

The 29th ground of the motion for new trial is as follows: "Because the Court erred in charging as follows: 'an infringement
22 of a trade name would be presumed to be fraudulent if the association first appropriating and using it have a clear right to

its use, and the association infringing upon the name knew of this right' in that the right under a trade name *or* not the same as the right of the parties in this case, and that the conferring of the defendants' name upon it by authority of the Act of Congress and the formation of it as a corporation under said Act can not be presumed to be fraudulent. Your petitioner shows that this ground raised and presented a Federal question, viz: whether this charge classing defendants' right as the right of a trade name, and the knowledge by defendants of plaintiffs' name and the use of its own by defendants under the authority of the Act of incorporation of its Supreme Lodge, which incorporation was by virtue of the authority of the Act of Congress of May 5th, 1870, did not decide against the validity of an authority exercised under the United States, and also whether such charge did not decide against, and instruct the jury against a right, title, privilege and immunity specially set up and claimed by defendants, acting under the authority of their Supreme Lodge incorporated under said Act of Congress, and whether said charge did not violate defendants' right under the charter of its said Supreme Lodge and violated the rights of the said Supreme Lodge and of the defendants claiming thereunder guaranteed by article 4, section one of the Constitution of the United States which declares "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

23 The 39th ground of motion for new trial is as follows: "Because of the failure of the Court to charge that the defendants claimed the right to their name under a charter of the District of Columbia by virtue of an Act of Congress approved May 5th, 1870, and set out in the 21st ground of this motion, and the answers of the jury to questions 1, 2, 3, 4, 8, 9, 10, 12 and 13 as set out in the 19th ground of this motion and the decree of the Court granted upon said verdict, violated defendants' right under said charter and violated article 4, section one of the Constitution of the United States which declares "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Your petitioner shows that this ground raised a Federal question, viz: whether the failure of the Court to charge, as set out in the said motion for new trial, violated the defendants' right under the Constitution and Laws of the United States as set out in the said motion.

The 40th ground of the motion for new trial is as follows: "Because the decree entered upon the verdict of the jury in this case is in violation of a law of the United States, to wit, the Act of Congress approved May 5th, 1870, known as the General Incorporation Act. Your petitioner shows that this ground raised a Federal question, viz: whether the decree in this case enjoining the defendants from incorporating in the name of their Supreme Lodge and

24 from exercising the rights conferred upon them by the said Supreme Lodge incorporated under the Act of Congress of 1870 is in violation of a law of the United States, to wit: the said Act of Congress approved May 5th, 1870, known as the General Incorporation Act.

Your petitioner further shows that upon the hearing of the motion for new trial made by petitioners in the Court below upon the said 40 grounds including the grounds enumerated above as presenting Federal questions, the court below overruled the motion for a new trial on all of said grounds, and your petitioners, by writ of error, brought this case to the March term, 1909, of the Supreme Court of the State of Georgia, the bill of exceptions embracing all of the said 40 grounds of error, and at the said term of the Supreme Court of the State of Georgia the case as made by the said writ of error, and the bill of exceptions, the brief of evidence and the accompanying record, came on to be heard in the said Supreme Court, and on the 21st day of February, 1910, the Supreme Court of Georgia rendered its judgment thereon affirming the judgment and decree of the Superior Court of Fulton County, the court below.

Petitioners further show that the said judgment of the said Supreme Court was, and is, a final judgment in the highest court of the State of Georgia in which a decision in this suit could or can be had.

Petitioners further show that the Federal questions hereinbefore enumerated in the motion for new trial were made in the said
25 case in the Supreme Court and that the said judgment of the Supreme Court affirming the court below on each and all of the grounds of said motion for new trial, including the Federal questions hereinbefore mentioned, declaring "no ground of the motion for new trial requires a reversal," was repugnant to and in conflict with the laws of the United States and of the Constitution of the United States in the respect mentioned in each of said grounds, and that the decision of the said enumerated Federal questions was necessary to the judgment rendered by the said Supreme Court.

Wherefore, your petitioners present herewith a transcript of the record of the Supreme Court of the State of Georgia in said case, and pray that a writ of error to the said Supreme Court be allowed, that citation be granted and signed, that the bond herewith presented be approved, and that upon compliance with the terms of the statute in such cases made and provided, said bond and writ of error may operate as a supersedeas, that the errors complained of may be reviewed in the Supreme Court of the United States and the judgment aforesaid of the said Supreme Court of Georgia be reversed.

CHARLES D. CRESWELL,
GEORGE R. HUTTO,
N. B. WILLIAMSON,
COLUMBUS J. SMITH,
FRED M. COHEN,
BOSS W. WARREN,
GEORGE W. BROWN,
JAMES W. DAVIS,
EDWIN J. TURNER,
GARRETT TAYLOR, AND
LUCIUS L. LEE,
By SAMUEL A. T. WATKINS,
Attorney in Fact.
C. L. PETTIGREW,
Attorney & Counselor for Plaintiffs in Error.

26 The writ of error as prayed for in the foregoing petition is hereby allowed, this 14th day of March, 1910, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed in the sum of $500.00 *dollars.*

Dated at Atlanta, this 14th day of March, 1910.

J. H. LUMPKIN,
Acting Presiding Justice.

Filed in office this 14 day of March, 1910.

Z. D. HARRISON,
Clerk of the Supreme Court of the State of Georgia.

27 Supreme Court of the State of Georgia.

CHAS. D. CRESWILL, GEO. R. HUTTO, N. B. WILLIAMSON, COLUMBUS J. SMITH, FRED M. COHEN, BOSS W. WARREN, GEO. W. BROWN, JAS. W. DAVIS, EDWIN J. TURNER, GARRETT TAYLOR AND LUCIUS L. LEE, Plaintiffs in Error,

vs.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA, T. H. NICKERSON, D. J. BAILEY, JNO. P. ROSS, WM. H. LEOPOLD, R. C. NORMAN, C. M. WALKER, B. D. BRANTLEY AND GEORGE T. CANN, Defendants in Error.

And now, before the Justices of the Supreme Court of the United States, at the Capitol, in the City of Washington, come Chas. D. Creswill, Geo. R. Hutto, N. B. Williamson, Columbus J. Smith, Fred M. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee, plaintiffs in error, by their counsel in the above stated case, and say that the Supreme Court of the State of Georgia erred in confirming the judgment of the Superior Court of Fulton County, Georgia, in the above stated case, and say, assigning error therein, that, in the record and proceedings in the aforesaid case there is manifest error in this, to-wit:

1. That the Supreme Court of the State of Georgia erred in affirming the judgment of the Superior Court of Fulton County in overruling the following grounds of a motion for a new trial
28 shown in the records before said Supreme Court of Georgia, on the grounds set out therein; said grounds being specified in the petition for writ of error in this cause, and numbered 19, 20, 21, 27, 28, 29, 39 and 40 in the record in this cause before the Supreme Court of the State of Georgia.

2. That the Supreme Court of the State of Georgia erred in adjudging and deciding "the mere addition to the distinctive name of the defendants' association of the words "of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia" can not be declared, as a matter of law, to constitute such a difference as to make the name so altered free from the complaint of being an infringement, or to render the finding of the jury that there was a fraudulent infringement contrary to law."

Plaintiffs in error say that the said quoted judgment of the Supreme Court of the State of Georgia is a decision against the right, title, privilege and immunity specially set up and claimed by the plaintiffs in error, by virtue of the authority of the Supreme Lodge of North America, South America, Europe, Asia, Africa and Australia, as conferred upon said Supreme Lodge by its incorporation in the District of Columbia by virtue of an Act of Congress of May 5th, 1870, known as the General Incorporation Act.

29 3. That the Supreme Court of Georgia erred in adjudging as follows: "It appears from the testimony that both the Plaintiffs' Order and the Defendants' Order took our atricles of incorporation under the General Act of Congress of May 5th, 1870, which makes provision for the suing out of articles of incorporation by persons desiring to associate themselves together for any lawful purpose (16 U. S. statute at large, 101). It will be remembered that the Plaintiffs' Order filed its article on August 5th, 1870, and the Defendants' Order on October 10th, 1889. This Act contains the following provisions relative to the name to be taken by the proposed corporation: 'The provisions of this Act shall not extend to nor apply to any association or individual who shall, in a certificate filed with the registrar of deeds, use or specify a name or style the same as that of any previously existing incorporated body in the District of Columbia.' Counsel for defendants contend that the name they are seeking to perpetuate by incorporation is not substantially the same; or a colorable imitation of plaintiffs' name; they say they make the name essentially different by adding the names of the continents, North America, South America, Europe, Asia, Africa and Australia. We do not agree with this contention of defendants, if the names of the continents thus used as suffixes were employed in every instance where the Order is desig-

30 nated." Plaintiffs in error say that the judgment and decision of the Supreme Court of the State of Georgia is against an authority exercised under the United States, and against the title, right, privilege and immunity specially set up and claimed by the plaintiffs in error by virtue of the incorporation of the Supreme Lodge of their association by the Act of Congress May 5th, 1870, and that such decision is contrary to article 4, section one, of the Constitution of the United States, which declares "full faith and credit shall be given in each State to the public Acts, records and judicial procedings of every other State."

4. That the Supreme Court of the State of Georgia erred in adjudging and deciding "this was not a suit between two corporations chartered in the District of Columbia under the General Incorporation Act of May 5th, 1870; the incorporated Supreme Lodge of plaintiffs' association was a party, but that of the defendants' association was not; so the assignment of error based on the contrary hypothesis was without merit." Plaintiffs in error say that said judgment and decision of the Supreme Court of the State of Georgia is against the right, title, privilege and immunity specially set up and claimed by the plaintiffs in error through the Supreme Lodge of the association of the plaintiffs in error, incorporated by virtue of an Act of Congress of May 5th., 1870, known as the General Incor-

poration Act; the right of the plaintiffs in error being derived
31 from and subsisting in the charter right of the Supreme Lodge of the association of the plaintiffs in error, as shown by the records in the case.

5. That the Supreme Court of the State of Georgia erred in adjudging and deciding: "where the plaintiffs did not allege or base their proceedings on the fact that the defendants were colored persons, and the Judge, in charging the jury, made no reference to the racial status of either plaintiffs or defendants, but submitted the issue as to the rights of the parties without reference to race or color, and the evidence authorized the findings against the defendants regardless of any consideration of their color, it can not be held that such finding was in conflict with the provisions of the Constitution of the United States which declares: "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Plaintiffs in error say that the said judgment of the Supreme Court of the State of Georgia is repugnant to and in conflict with the provisions of the Constitution of the United States which declares: "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law," inasmuch as all the evidence upon which the findings referred
32 to are founded is illegal evidence, such as entirely applies to the exclusion of plaintiffs in error as a colored race from the organization and maintenance of an association repugnant and offensive to the defendants in error.

6. That the Supreme Court of the State of Georgia erred in adjudging and deciding that "no ground of the motion for a new trial requires a reversal." Plaintiffs in error say that the judgment of the said Supreme Court of the State of Georgia is repugnant to the Constitution of the United States and to the 14th Amendment thereof.

Wherefore, the said plaintiffs in error pray that the judgment and decision aforesaid of the Supreme Court of the State of Georgia may be reversed, and that they may be restored to their full rights as claimed by them in said case, and which they have lost by the judgment and decision of the Supreme Court of the State of Georgia.

CHARLES D. CRESWILL,
COLUMBUS J. SMITH,
GEORGE W. BROWN,
GEORGE R. HUTTO,
FRED M. COHEN,
JAMES W. DAVIS,
N. B. WILLIAMSON,
BASS W. WARREN,
EDWIN J. TURNER,
GARRETT TAYLOR AND
LUCIUS L. LEE,
By SAMUEL A. T. WATKINS,
Attorney in Fact.
C. L. PETTIGREW,
Attorneys and of Counsel for Plaintiffs in Error.

Filed in office March 14, 1910.
Z. D. HARRISON,
Clk S. C. Ga.

33 *Bond.*

Know All Men by These Presents that we, Chas. D. Creswill, Geo. N. Stone, Geo. R. Hutto, N. B. Williamson, Columbus J. Smith, Fred M. Cohen, Boss W. Warren, Geo. W. Brown, James W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee as principals, and The United States Fidelity and Guaranty Co. as surety, are held and firmly bound unto the Grand Lodge Knights of Pythias of Georgia, T. H. Nickerson, D. J. Bailey, John P. Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and Geo. T. Cann, in the sum of five hundred ($500) dollars, to be paid to the said obligees, their successors, representatives and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Signed with our hands, and sealed with our seals, and dated this 14th day of March, 1910.

Filed in office M'ch 14, 1910.
Z. D. HARRISON,
Clk S. C. Ga.

Whereas the above named plaintiffs in error have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Georgia, now, therefore, the condition of

34 this obligation is such that if the above named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

CHARLES D. CRESWILL. [SEAL.]
GEORGE N. STONEY. [SEAL.]
GEORGE R. HUTTO. [SEAL.]
N. B. WILLIAMSON. [SEAL.]
COLUMBUS J. SMITH. [SEAL.]
FRED M. COHEN. [SEAL.]
BOSS W. WARREN. [SEAL.]
GEORGE W. BROWN. [SEAL.]
JAMES W. DAVIS. [SEAL.]
EDWIN J. TURNER. [SEAL.]
GARRETT TAYLOR, AND [SEAL.]
LUCIUS LEE.
By SAMUEL A. T. WATKINS, [SEAL.]
Attorney in Fact, and
By C. L. PETTIGREW,
Attorney at Law. [SEAL.]
For Pl'ffs in Error.
THE UNITED STATES
FIDELITY & GUARANTY CO.,
By FRANK H. REYNOLDS, [SEAL.]
General Agent.

Signed, sealed and delivered in the presence of

—— ——.

Approved this 14th day of March, 1910.

J. H. LUMPKIN,
Acting Presiding Justice.

35 GEORGIA, *Fulton County:*

Be it remembered that on the 25th day of May, 1908, at the regular term of the Superior Court of said county before the Honorable John T. Pendleton, judge presiding, there came on to be tried the case of the Grand Lodge Knights of Pythias of Georgia vs. C. D. Creswill et al., the same being a petition for injunction, relief, &c.

The original petition was filed on the 25th day of June, 1906. Said petition was amended on the 24th day of November, 1906. Defendant filed a demurrer to said petition and amendment, which demurrer was overruled, whereupon the defendant filed a plea and answer to said petition and said case came on for trial on said 25th day of May, 1908, in the Superior Court of said county, the Honorable John T. Pendleton, judge then and there presiding. A jury was stricken, evidence was introduced for plaintiff and defendant. This being an equitable petition, twelve questions were submitted to the jury by the court to be answered by the verdict. After hearing the evidence, the argument of counsel and the charge of the court, the jury returned a verdict in favor of the plaintiff on each and every question submitted, and a decree was duly entered on said verdict, all of which appears of record.

The defendant thereafter in regular course and within the time prescribed by law filed its motion for a new trial and also an amended motion which was allowed by the court, with the evidence
36 duly approved by the court and the charge of the court properly certified. Said motion came on for a hearing on the 5th day of Dec., 1908, proper orders having theretofore been taken setting the hearing of the motion specially for that date, and the recital of the facts in the several grounds of the motion were approved, and the said motion was by the court overruled on each and all of the grounds stated in said original motion and amendment thereto.

To this judgment of the court the defendant excepted and now excepts and assigns error thereon, and says that the court erred in overruling said motion for new trial on each and all of the grounds therein stated. The defendant specifies the following portions of the record in said case as material to a clear understanding of the errors in this bill of exceptions, to-wit:

1. The original petition in said case filed on the 25th day of June, 1906.

2. The amendment thereto certified on the 24th day of Nov., 1906, and filed on the 24th day of Nov., 1906.

3. The amendment thereto certified and filed on the 26th day of Nov., 1906.

4. The demurrer filed by the defendant on the 13th day of August, 1906.

5. The original plea and answer of the defendant filed
37 on the 22nd day of Sept., 1906.

6. The amendment to the defendant's answer certified and filed on the 26th day of Nov., 1906.

7. The motion for new trial filed by the defendant on the 10th day of June, 1908, with rule nisi and service thereon with the orders granted with relation to the time and place of hearing.

8. The amendded motion for new trial allowed and filed on Dec. 5th, 1908.

9. Brief of evidence with order and entries thereon filed on the 5th day of Dec., 1908.

10. The charge of the court with the approval of the judge thereon, dated June 22nd, 1908, and filed on the 5th day of Dec., 1908.

11. The verdict of the jury rendered in said case on the 27th day of May, 1908, together with the questions and answers thereto.

12. The judgment and decree of the court on said verdict dated the 10th day of June, 1908.

13. The judgment of the court overruling said motion for new trial, dated the 5th day of Dec., 1908.

14. The entries of filing of each and all of the parts of the record above specified to be entered and transmitted in the proper order.

38 And now within the time provided by law, and within thirty days of the entry of the judgment overruling said motion for new trial come the defendants and tenders this their bill of exceptions, and prays that the same may be certified as provided by law, in order that the errors complained of may be considered and corrected by the Supreme Court of Georgia.

BELL, PETTIGREW & BELL,
Att'ys for Def'ts and Movants.

1008 Empire Building, City of Atlanta, Georgia.

I do certify that the foregoing bill of exceptions is true, and contains all the evidence and specifies all of the record material to a clear understanding of the errors complained of. And the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the next term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This 18 day of Dec., 1908.

J. T. PENDLETON,
J. S. C. A. C.

39 Service of the foregoing bill of exceptions and certificates of Judge is hereby acknowledged, copy received and all other and further service and notice is hereby waived.
This 19th day of December, 1908.

JNO. P. ROSS, *Macon, Ga.;*
HAMILTON DOUGLAS, *Atlanta, Ga.,*
Att'ys for Def'ts in Error.

Filed in office Dec. 22, 1908.
ARNOLD BROYLES, *Clerk.*

BELL, PETTIGREW & BELL,
Att'ys for Creswill et al.

40 GEORGIA, *Fulton County:*

I hereby certify, That the foregoing bill of exceptions, hereunto attached is the true original bill of exceptions in the case stated, to-wit: C. D. Creswill, Pl'ff in Error, vs. Grand Lodge Knights of Pythias of Ga., Def't in Error, and that a copy hereof has been made and filed in this office.
Witness my signature and the seal of court affixed this the 19 day of Jan'y, 1909.

[SEAL.] ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
ex-Officio Clerk City Court of Atlanta.

Filed in Office Jan. 20, 1909.
LOGAN BLECKLEY,
D. C. S. C. Ga.

41 Atlanta Supreme Court, March Term, 1909.

No. 16.

C. D. CRESWILL et al.
vs.
GRAND LODGE KNIGHTS OF PYTHIAS OF GA.

The members of the Supreme Court being members of the Knights of Pythias (The Chief Justice Fish and Justices Evans and Atkinson) and their disqualification having been certified to the Governor, and Hon. R. W. Freeman, Hon. H. G. Lewis and Hon. Price Edwards, Judges of the Superior Court having been designated to preside in their stead, and Hon. H. G. Lewis since the argument having ascertained that his son is a member of the order of defendant in error, and desiring to be excused from further participation in the consideration of the case, before its consideration and decision by the Supreme Court, it is agreed by counsel for both plaintiffs and defendants in error, that said Hon. H. G. Lewis be excused from further participation in the consideration

and decision of said case, and that the remaining Justices and Judges before whom said case was argued, proceed with its consideration and decision; and to carry out this agreement counsel on both sides withdraw their respective requests for a full bench to the extent set forth above and agree that any entry, order or other motion or act may be made to effectuate or carry out this agreement, and that all objection of any character is waived to
42 the case proceeding to decision without further argument.

It is further agreed by counsel on both sides that if any other of said Justices or Judges should have relatives, who are members of Defendant in Error, or should otherwise be disqualified, any and all such disqualifications, actual or possible, are waived, and counsel on both sides request that the said five Justices and Judges, before whom the case was argued in the Supreme Court (after excusing Judge Lewis) proceed to consider and determine said case.

This July 17, 1909.

BELL, PETTIGREW & BELL,
Att'ys for Pl'ffs in Error.

JNO. P. ROSS,
HAMILTON DOUGLAS,
Att'ys for Def'ts in Error.

Filed in Office July 17, 1909.

W. E. TALLEY,
D. C. S. C. Ga.

43 (*Petition.*)

Fulton Superior Court, Sept. Term, 1906.

#14190.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA
vs.
CHAS. C. CRESWILL et al.

GEORGIA, *Fulton County.*

To the Superior Court of said County:

Your petitioners, the Grand Lodge Knights of Pythias of Georgia, and T. H. Nickerson, D. J. Bailey, John P. Ross, William H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and Geo. T. Cann, all of the State of Georgia, bring this petition against Charles G. Creswill, a resident of Bibb County, Georgia, George N. Stoney, a resident of Richmond County, George R. Hutto, N. B. Williamson and Columbus J. Smith, residents of Decatur County, Fred M. Cohen, a resident of Chatham County, Boss W. Warren, a resident of Sumter County, George W. Brown, a resident of Dougherty County, James W. Davis, a resident of Terrell County, Edwin J. Turner, a resident of Muscogee County, Garrett Taylor, a resident of Lowndes

County, and Lucius L. Lee, a resident of Fulton County, all of the State of Georgia, who are hereinafter called defendants, and respectfully show—

(1) That on February 19th, 1864, in Washington, D. C., Justus H. Rathbone and his associates organized a society, having
44 for its ultimate object Friendship, Charity and Benevolence, to be known and styled as the "Knights of Pythias"; and ever since the date of said organization said society has been designated and known as the Order of Knights of Pythias, and is now so designated and known. By the plan of its organization and for the accomplishment of its object, it was to consist of subordinate lodges organized in various of the cities and towns in the United States, and, pursuant to the laws adopted for its government, such subordinate lodges were organized. With the growth of the Order, the subordinate lodges within the territorial limits of the District of Columbia on April 8th, 1864, organized and submitted themselves to the jurisdiction and control of a central body designated and known as the Grand Lodge Knights of Pythias of the District of Columbia. And by and with authority from said Grand Lodge, subordinate lodges of said Order were from time to time organized in various of the States of the United States. And thereafter, from time to time the subordinate lodges within the territorial limits of the several States were organized and became subject to like central bodies designated and known as Grand Lodges of the Order of Knights of Pythias in said several States, the Grand Lodge of Pennsylvania having been organized in 1867, and the Grand Lodge of New Jersey and the Grand Lodge of Maryland having been
45 organized in March, 1868. That with the growth of the Order and pursuant to the constitution and laws adopted by it for its government, the several Grand Lodges, on August 11th, 1868, organized a Supreme Lodge Knights of Pythias for the United States, to which Supreme body of the Order was committed jurisdiction and control over the grand Lodges and subordinate lodges of the Order throughout the United States, and by its laws, rules and regulations were adopted and promulgated for the government of said Order of Knights of Pythias.

(2) That in accordance with the Act of Congress entitled "An Act to provide for the creation of corporations in the District of Columbia by general laws", approved May 5th, 1870, said Order was incorporated as a beneficial association on August 5th, 1870, under the name and style of "The Supreme Lodge of the Knights of Pythias." The said certificate of incorporation was amended on October 5th, 1875, and said Amended Act of incorporation of the Supreme Lodge Knights of Pythias was again amended on May 24th, 1882, by virtue of the provisions of the Act of Congress aforesaid. And by Act of Congress, approved June 29th, 1894, the officers and members of the Supreme Lodge Knights of Pythias and their successors were incorporated and made a body politic and corporate by the name of "The Supreme Lodge Knights of Pythias."

(3) By authority of said Supreme Lodge Knights of
46 Pythias and pursuant to the laws of the Order, a subordinate Lodge of said Order of Knights of Pythias was instituted i

Savannah, Georgia, on September 24th, 1869, and in Augusta, Georgia, on October 28th, 1870, and in Macon, Georgia, on April 13th, 1870, and in Jesup, Georgia, on July 26th, 1870; and other subordinate lodges having been instituted in said State, a Grand Lodge Knights of Pythias of Georgia was instituted on March 20th, 1871, by virtue of a charter granted by the Supreme Lodge Knights of Pythias, a copy of which charter is hereto attached and designated as Exhibit A. The first convention of said Grand Lodge Knights of Pythias of Georgia was held at Savannah, Georgia, March 20th, 1871, and annual convention of said Grand Lodge having been held in various cities in said State each and ever year since said date, the last convention having been convened at Augusta, Georgia, on May 15th, 1906.

(4) By the constitution and laws of said Supreme Lodge Knights of Pythias, the Grand Lodge Knights of Pythias of Georgia has full and exclusive power and authority to institute and charter subordinate lodges in said State, and to revoke such charters, and to exercise within the territorial limits of said State of Georgia all the power and authority for the protection and government of said subordinate lodges and the members thereof, which is not reserved to said Supreme Lodge by the Supreme Constitution, and generally to direct and control the government of said Order within
47 the State of Georgia, and to protect the same from imposition and to foster and direct the subordinate lodges and the members thereof for the accomplishment of the purposes and objects of said Order. There are now in the State of Georgia, under the jurisdiction and control of said Grand Lodge, more than two hundred subordinate lodges of said Order of Knights of Pythias (among them being the lodges hereinbefore named, which were first instituted in this State, said lodges having been in continuous existence since they were instituted), with a membership of more than twelve thousand (12000) men. And your petitioner, the Grand Lodge Knights of Pythias of Georgia, brings this petition in its right, and for the use and benefit of the aforesaid subordinate lodges and the members thereof, whose names it is impossible to set forth herein.

(5) Your petitioners, T. H. Nickerson, D. J. Bailey, John P. Ross, William H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and George T. Cann, are the officers of said Grand Lodge Knights of Pythias of Georgia, and as such are charged with the administration of its affairs, and said named officers join herein for themselves individually and as officers of said Grand Lodge, and for and on behalf of said Grand Lodge and their associates, who are members with them of said Lodge, your said petitioners and their associates and fellow-members of said Grand Lodge and said
48 subordinate lodges having associated themselves together under and adopted the name and title of said fraternal Order of Knights of Pythias.

(6) Your petitioners further show that said Order of Knights of Pythias is a secret organization, having a seal and signs, pass words, and emblems intended solely for the use of the members of said Order among themselves, for the purposes of introduction and identification, and of otherwise accomplishing the objects of said Order.

And that since the organization of said Order and its introduction into the State of Georgia as aforesaid, it has been known and called the Order of Knights of Pythias, and its members have been known and called Knights of Pythias or Pythian Knights, indifferently. And petitioners aver that the word "Pythias" is the distinctive word in the name of said Order, which ever has and still does cardinally distinguish the name and style of said Order from other fraternal orders in the State of Georgia, and the United States, and that your petitioners and their associates have adopted and have the exclusive right to the use of the title aforesaid, and to the word "Pythias" and the phrase "Knights of Pythias," which form a part of said title.

(7) That the defendants hereinbefore named have filed a petition to the superior court of Fulton County, for themselves and their associates, to be incorporated under the name and style of
49 "The Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia," a copy of which petition for incorporation is hereto attached as Exhibit "B", and said defendants have caused said petition for incorporation to be published as provided by the laws of Georgia, and, unless restrained by this court, said defendants will obtain the grant of charter under the name and style set forth in said petition.

Petitioners aver that said defendants and their associates have never been authorized to associate themselves together, or to make their said application for charter by said "The Supreme Lodge Knights of Pythias" or by your petitioner, the Grand Lodge Knights of Pythias of Georgia; and further aver that said defendants have never been authorized by said Supreme Lodge or said Grand Lodge to use the name and style of said Order of Knights of Pythias, or any title which is a colorable imitation of the name and title of said Grand Lodge Knights of Pythias of Georgia; and further aver that said defendants are not now and never have been members of said The Supreme Lodge Knights of Pythias, or of any subordinate lodge instituted by its authority, and are not and never have been members of said Grand Lodge Knights of Pythias of Georgia, or of any subordinate lodge instituted and established by its authority.

50 (8) Petitioners show that the name and style set forth in defendants' said petitioner for incorporation is substantially identical with the name and style of your petitioner, Grand Lodge Knights of Pythias of Georgia, the words set forth in defendants' petition after the word "Pythias" in the name under which they seek incorporation being surplusage; and petitioners aver that the use of the word "Pythias" immediately in conjunction with the words "Knights of" in the name under which said defendants seek incorporation, causes said name to be a colorable imitation of the name and style of your petitioner, the Grand Lodge Knights of Pythias of Georgia, especially when said words are considered in connection with the words used to make up a name under which said defendants are seeking to be incorporated.

(9) Petitioners show that said defendants and their associates have no right or authority to adopt or use, or to be incorporated in

the name and style set forth in their said petition for incorporation, or to use or to be incorporated in any name which is substantially identical with or a colorable imitation of the name of your petitioner, the Grand Lodge Knights of Pythias of Georgia, and that the use of such name by the defendants and their associates and their incorporation under such name would be a wrong and injury to your petitioners and their associates, and a fraud upon your
51 petitioners and their associates and the public.

(10) Petitioners further show that said defendants and their associates have organized a voluntary association in the State of Georgia under the name and style of "Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia," and are using and avow it their intention to continue to use said name, and defendants are the officers of said voluntary association; and under said name said defendants and their associates have organized subordinate lodges in various cities and towns in the State of Georgia, and authorized said subordinate Lodges to use the name and designate themselves as subordinate Lodges of the Order of Knights of Pythias, and authorized the members of said lodges to denominate themselves Knights of Pythias, and said subordinate lodges are using the name of the Order of Knights of Pythias and the members thereof denominate and call themselves and cause themselves to be denominated and called Knights of Pythias. Petitioners are not informed of the time when said defendants and their associates organized themselves and adopted the name aforesaid, or when and where they have organized said subordinate lodges, except that they know that such subordinate lodges are organized in the principal cities and many of the towns of Georgia, but petitioners aver that said organizations were organized and said name adopted and used by said defendants
52 their predecessors and associates some years after the organization of your petitioner, the Grand Lodge Knights of Pythias of Georgia, and long after the said The Supreme Lodge Knights of Pythias had been organized and used and become the owner of its said name, and long after your petitioner The Grand Lodge Knights of Pythias had been organized and had used and become the owner of its said name and it and its members entitled to the exclusive use of said name in the State of Georgia, and to the exclusive use of the distinctive word "Pythias" used in said name. And petitioner- aver that said defendants and their associates and predecessors have never been authorized by said Supreme Lodge Knights of Pythias, or by your petitioner The Grand Lodge Knights of Pythias of Georgia, to associate themselves together, or to use the name and style of said Order of Knights of Pythias, or any title which is a colorable imitation of the name and title of the Grand Lodge Knights of Pythias of Georgia; and further aver that said defendants, their predecessors and associates, are not now and never have been members of the said Supreme Lodge Knights of Pythias, or of any subordinate lodge instituted by its authority, and are not and never have been members of said The Grand Lodge Knights of Pythias of Georgia, or of any subordinate lodge instituted and established by its authority.

53 (11) Petitioners show that said name and style so used by said defendants and their associates in their said voluntary association is substantially identical with the name and style of your petitioner, The Grand Lodge Knights of Pythias of Georgia, the words used in the said name after the word, "Pythias" being surplusage; and that the use of the word "Pythias" immediately in conjunction with the words "Knights of" in the name under which said defendants and their associates have organized and are conducting their said voluntary association causes said name to be a colorable imitation of the name of your petitioner, The Grand Lodge Knights of Pythias of Georgia. And petitioners aver that said defendants and their associates and successors have no right or authority to adopt or use said name and style in their said voluntary association, or to use any name which is substantially identical with or a colorable imitation of the name of the Grand Lodge Knights of Pythias of Georgia; and that the use of said name by said defendants and their associates and successors, is a wrong and injury to your petitioners and their associates, and a fraud upon your petitioners and their associates and the public.

And petitioners further show that without any warrant or authority from your petitioners said defendants and their associates in said voluntary association are using and wearing emblems and insignia identical in color and design with the emblems and insignia
54 of your petitioner. The Grand Lodge Knights of Pythias of Georgia. And petitioners aver that such use of said emblems and insignia by the defendants and their associates is a wrong and injury to your petitioners and their associates and a fraud upon your petitioners and their associates, and the public, the said emblems and insignia in color and design having long been adopted and used by your said petitioner and its members for the purpose of identifying its said members and of promulgating said Order and accomplishing the purposes of its organization.

(12) Your petitioner The Grand Lodge Knights of Pythias of Georgia and the subordinate lodges under its jurisdiction and existing by its authority, have been since their organization, and are now, engaged in the work of charity and benevolence, and in the aid of its members in the ways and manner usual with fraternal orders and organizations, and in the carrying out of the purposes and objects of the organization of your said petitioner, in the doing of which said Order of Knights of Pythias in the State of Georgia, spends in the aggregate large sums of money, and your petitioners show that in the prosecution of the fraternal and beneficial objects of said Order your petitioner, The Grand Lodge Knights of Pythias and the subordinate lodges existing by its authority and the members thereof, are entitled to the exclusive use of the name which it has adopted and owns, and by which it is designated and known,
55 as hereinbefore alleged.

(13) Petitioners show that it is impossible for the Supreme Lodge Knights of Pythias to take action with reference to the aforesaid petition for incorporation filed by defendants, because said Supreme Lodge convenes biennially, and there will not be another session of said Supreme Lodge until next October. And petitioners

show that they have requested the Supreme Chancellor, who is the Supreme executive officer of said Supreme Lodge, to bring such suit or to have the said Supreme Lodge Knights of Pythias join herein as a party plaintiff, but the said Supreme Chancellor has declined so to do, stating as his reason for declining that he can not assume the responsibility of so using the name of the Supreme Lodge, but must refer the matter to the Supreme Lodge, which will be in session a few months hence.

But your petitioners further aver that by the constitution and laws of the said Supreme Lodge Knights of Pythias, your petitioners the said Grand Lodge Knights of Pythias of Georgia, since its institution has been and now is vested with full, complete and original right of Pythian domain over the State of Georgia, and that no subordinate lodge of said Order has or can have legal existence within said State, unless it is recognized by and under the control of the said Grand Lodge Knights of Pythias of Georgia, and that to said Grand Lodge is committed the duty and full right, power
56 and authority to direct and control the affairs of said Order of Knights of Pythias and the subordinate lodges thereof within the State of Georgia, and to protect and subserve the interest of said Order, and to do all matters and things which shall seem to the said Grand Lodge meet and proper for the good and welfare of said Order Knights of Pythias and the subordinate lodge thereof in the State of Georgia. And to such end, said Grand Lodge Knights of Pythias of Georgia and the officers thereof, have full right and authority to bring this petition and prosecute the same for and in behalf of themselves and the Order of Knights of Pythias of Georgia.

Wherefore, your petitioners, expressly waiving answer under oath from each and all of the defendants, pray:

1. That the said defendants and each of them, and their associates and successors, be restrained and perpetually enjoined from prosecuting the aforesaid petition for incorporation, and from further proceeding to become incorporated under the name and style set forth in their aforesaid petition for incorporation, or under the name and style of the Grand Lodge Knights of Pythias of Georgia, or under any name or title embracing the word "Pythias" in conjunction with the words "Knights of" or under any name or title which is substantially identical with or a colorable imitation of the name of your petitioner, the Grand Lodge Knights of
57 Pythias of Georgia.

2. That said defendants, their associates and successors, and each of them, be restrained and perpetually enjoined from further using in their aforesaid voluntary organization the said name of "the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia", and from, in said voluntary organization and in the conduct of its affairs, using any name embracing the word "Pythias" in conjunction with the words "Knights of", or any other name which is a colorable imitation of the name of your petitioner, the Grand Lodge Knights of Pythias of Georgia, and that said defendants, their associates and successors, and each of them, be further restrained and enjoined from instituting subordinate lodges under

the name and designation of lodges of the Order of Knights of Pythias, and from further authorizing the continued existence of subordinate lodges under the jurisdiction of said voluntary organization using the name and designation of Knights of Pythias, or any name which is a colorable imitation thereof; and from designating and calling themselves, and from authorizing their associates and members of subordinate lodges organized and existing by their authority and the authority of their said voluntary association from designating and calling themselves Knights of Pythias, or any other name that is a colorable imitation thereof; and from
58 using any seal which is a colorable imitation of the seal of your petitioner, the Grand Lodge Knights of Pythias of Georgia; and from using and wearing emblems and insignia and insignia buttons, pins, rings and watch charms, which, in color and design, are similar to or a colorable imitation of the emblems and insignia buttons, pins, rings, and watch charms adopted, used and worn by your petitioner, the Grand Lodge Knights of Pythias of Georgia, and the members thereof, and from authorizing or permitting the further use and wearing of such emblems and insignia by members of subordinate lodges instituted by and existing under the authority of said voluntary association, of which the defendants are officers.

3. That petitioners may have such other and further relief as to the court may — just and proper, and in accordance with law and equity.

4. That process may issue, requiring the said defendants, Charles C. Creswill, of Bibb County, Geo. N. Stoney of Richmond County, Geo. R. Hutto, N. B. Williamson and Columbus J. Smith of Decatur County, Fred M. Cohen of Chatham County, Boss W. Warren of Sumter County, Geo. W. Brown of Dougherty County, James W. Davis of Terrell County, Edwin J. Turner of Muscogee County, Garrett Taylor of Lowndes County, and Lucius L. Lee of Fulton County, to be and appear at the next term of this court to answer this petition, and to stand to and and abide the judgment
59 and decree of the court in the premises; and that until final decree the said defendants, their associates and successors, be restrained and enjoined as hereinbefore prayed.

JOHN P. ROSS,
Petitioners' Attorney.

60 (EXHIBIT "A.")

Charter Supreme Lodge Knights of Pythias.

Know ye that the Supreme Chancellor and Officers of the Supreme Lodge of the World, Knights of Pythias, Having received an application in due form to institute a Grand Lodge in the State of Georgia, and reposing full confidence in the virtue, integrity and faithfulness of said petitioners, doth grant this charter to our worthy and well beloved Brothers Venerable Grand Patriarch W. H. Bourne, Grand Chancellor D. B. Woodruff, Vice Grand Chancellor

W. J. Goodrich, Grand R. & C. Scribe, C. J. Stroberg, Grand Banker W. C. Remshart and their successors, to constitute said Grand Lodge Knights of Pythias of said State and jurisdiction thereunto belonging.

And the said Grand Lodge being duly and lawfully formed and constituted, is hereby authorized and empowered to organize Subordinate Lodges in its own jurisdiction in conformity to the laws established by the Supreme Lodge of the World, and govern said lodges according to the intent and meaning of the laws of the Order as promulgated by the Supreme Lodge.

And the said Grand Lodge of the State of Georgia doth solemnly promise to act according to the instructions of this Charter until it is revoked by the Supreme Lodge. In default thereof this charter may be suspended or taken away at the pleasure of the Supreme Chancellor.

61 In witness whereof we have hereunto subscribed our names and affixed the seal of the Supreme Lodge this 20th day of March, A. D. 1871, and of the Order of the Seventh year.

SAMUEL READ,
Supreme Chancellor.

Attest:

CLARENCE M. BARTON,
[SEAL.] *Supreme Record. and Corres. Scribe.*

(EXHIBIT "B.")

STATE OF GEORGIA,
County of Fulton:

To the Superior Court of said County:

The petition of Chas. C. Creswill of Bibb County, Geo. N. Stoney of Richmond County, Geo. R. Hutto, N. B. Williamson and Columbus J. Smith of Decatur County, Fred M. Cohen of Chatham County, Boss W. Warren of Sumter County, Geo. W. Brown of Dougherty County, Jas. W. Davis of Terrell County, Edwin J. Turner of Muscogee County, Garrett Taylor of Lowndes County, and Lucius L. Lee of Fulton County, and all of the State aforesaid, respectfully shows:

(1) Petitioners are the Grand Lodge Officers of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia, elected for the period of one year from the second Tuesday in July, 1905.

62 (2) Petitioners desire for themselves, their associates and successors in office to be incorporated and made a body corporate for the full period of twenty years, with the usual privilege of renewal at the expiration of said term, under the corporate name and style of

"The Grand Lodge, Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia."

(3) The object of said Grand Lodge is not for pecuniary gain, but for the social and benevolent benefit of its members, and their dependent relatives;

(1) To organize and charter subordinate lodges in the said State whenever a convention of 21 or more men, between the ages of 19 and 50 years have been secured;

(2) To provide an endowment fund for the payment of death benefits to the widows, dependent relatives, or the legal representatives of deceased members.

(4) There is to be no capital stock of the said corporation, but its revenues shall be derived from endowment-dues, fines, assessments and per capita taxes, exacted of and levied against its members by the said Grand Lodge, and the sale of supplies to its subordinate lodges.

63 (5) Petitioners show that they have a representative form of government, a lodge system, and a secret ritualistic form of work.

(6) The Grand Lodge shall be composed of its officers, and such other members of the Order as the laws thereof may fix and determine, and the officers of the Grand Lodge shall be the officers of the corporation aforesaid, regulated and controlled by its laws.

Said corporation shall be governed by the laws of the Knights of Pythias aforesaid, to which it is subordinate, and the existing laws of the said Grand Lodge, and such further laws, rules and regulations as it may adopt at its sessions that are not in conflict with the laws of the said State.

Said Grand Lodge shall have annual sessions convening on the second Tuesday in July, and at which sessions its officers shall be elected to serve one year, or until their successors shall be elected and qualified, and such other special conventions or sessions as may be provided for by the laws of the Grand Lodge aforesaid.

(7) Petitioners pray for the right to sue and be sued; to contract; to plead and be impleaded; to have and use a common seal; to acquire by gift, purchase or otherwise, such real or personal property, or both, as may be necessary for the conducting of its business; to incur obligations and to secure the same by notes, bonds or

64 mortgages, as may be best suited to the conduct of its business.

(8) The principal place of business of said corporation shall be in Atlanta, Fulton County, or in whatever county in the said State wherever the chief officer of said Grand Lodge, who shall be ex-officio the chief officer of the said corporation, may reside.

Wherefore, petitioners pray for an order of said court incorporating them as prayed, together with such other and further rights, privileges and franchises as are usually conferred upon corporations of like character.

And petitioners will ever pray, etc.

(Signed) JOHNSON & MALONE,
Petitioners' Att'ys.

GEORGIA, *Bibb County:*

Personally appeared J. H. Hertz, who, being first legally sworn, deposes and says that he is a member of the Grand Lodge Knights of Pythias of Georgia, one of the petitioners named in the foregoing petition, and has been a member of said lodge since the year 1879, and that he was the chief executive officer of said Grand Lodge, known as the Grand Chancellor thereof, in 1882-1883, and that he is familiar with the history of said Grand Lodge and the Order Knights of Pythias; and deponent says that the allegations
65 of fact contained in the foregoing petition are true.

J. H. HERTZ.

Sworn to and subscribed before me this 23rd, day of June, 1906.

M. K. BROOKS,
N. P. Bibb Co., Ga.

GEORGIA, *Bibb County:*

Personally appeared Jno. P. Ross, who, being first legally sworn, says that he is a member of the Grand Lodge Knights of Pythias of Georgia, one of the petitioners named in the foregoing petition, and has been a member of said Grand Lodge for more than ten years; and deponent says that the allegations of facts in said petition concerning the organization and progress of the Order of Knights of Pythias and the Grand Lodge Knights of Pythias of Georgia are true according to the authentic and recognized history of said Order and said Grand Lodge; and that all the other allegations of fact in said petition are true.

JNO. P. ROSS.

Sworn to and subscribed before me, this 23rd day of June, 1906.

OSCAR E. DOOLEY,
N. P. Bibb Co., Ga.

66 Upon reading and considering the foregoing petition, it is ordered that the defendants therein, and each of them, show cause before me at my chambers at 9 o'clock A. M., on the 2 day of July, 1906, why the prayers in said petition for restraint and injunction should not be granted. In the meantime, and until the further order of the court, said defendants and each of them and their successors and attorneys are hereby restrained and enjoined from prosecuting their petition for incorporation, and from further proceeding to become incorporated under the name and style set forth in their petition for incorporation, as in the above and foregoing petition prayed.

It is further ordered that the foregoing petition, with process and copy of this order, be served upon the defendants as soon as may be

J. T. PENDLETON,
Judge S. C. A. C.

June 25, 1906.

GEORGIA, *Fulton County:*

The defendants named in the foregoing petition, and each of them, by their undersigned attorneys at law, do hereby acknowledge due and legal service of the foregoing petition and rule nisi, and receipt of a copy of the same; and do hereby waive process,
67 copy process, and all other and further service of said petition and rule nisi.

This 26th day of June, 1906.

JOHNSON AND MALONE,
Att'ys for Defendants.

Filed in office this the 25th day of June, 1906.
A. B. HARRISON, *D. Clerk.*

68 (*Demurrer.*)

GEORGIA, *Fulton County:*

The defendants demur to the petition of the plaintiffs on the following grounds:

(A) For want of proper plaintiffs in that it appears upon the face of the petition,

1st. That the plaintiff, the Grand Lodge Knights of Pythias of Georgia, is not a corporation nor a natural person, and therefore has no capacity to sue.

2nd. That it appears that the Supreme Lodge Knights of Pythias from which the said plaintiff derives its existence is a corporation and does not join in the suit, and by its Supreme Chancellor has declined so to do, although especially requested.

3rd. That the said Grand Lodge Knights of Pythias of Georgia, plaintiff, has no authority under exhibit A, to bring said suit, nor is it authorized in any way, nor can it be on account of its character and formation.

4th. That the other plaintiffs, T. H. Nickerson, D. J. Bailey, Jno. P. Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Bradley and Geo. T. Cann, as administrative officers of the other plaintiff have no capacity in law, neither as such officers, or individually, nor have they such interest in the subject-matter of
69 this suit to act in the capacity of plaintiffs.

(B) 1st. There is no cause of action stated in the said petition.

2nd. That there is no equity in the said petition.

3rd. That no right appears in the plaintiffs to prevent the defendants from proceeding to do what they are alleged to be doing in said petition.

4th. That the words "Knights of Pythias" or combination with said words are not shown to belong exclusively to the plaintiffs and to be owned by them.

5th. That the words "Knights of Pythias" or their combinations are not such words as the plaintiffs can restrain the defendants from the use of.

6th. That the plaintiffs show no right to prevent the defendants from becoming a corporation under the laws of Georgia, under the name and style as alleged.

7th. That the name under which the defendants propose to be incorporated is not such a name, as in law, interferes with the plaintiff's name.

8th. That the name of the defendant is not substantially identical with, or a colorable imitation, of the name of the plaintiff.

9th. But even if it were a colorable imitation the name of the plaintiff is not such a name as would give the plaintiffs a
70 right in law to stop the use of the said defendants' name.

10th. The plaintiff has been guilty of such laches in proceeding against the defendants and in submitting to the defendants having used its own name, emblems, insignia, and the other things alleged, as at this late date, it would not be equitable or just for the plaintiff to have any remedy in this suit.

(11). That it does not appear what emblems and insignia the plaintiffs have, nor what emblems and insignia, identical in color and design, that the defendants are using.

(12th. That it does not appear that any wrong or injury is thereby done to the plaintiffs.

(13th. That the plaintiffs do not allege any financial injury nor injury of any other kind done by the defendants to the plaintiffs, by the means and things set out in the said petition.

14th. That the name and style under which the defendants propose to act, to wit: The Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia," is a totally different combination of words from anything that the plaintiffs used, and is entirely distinct from and is utterly unable to injure any rights of the plaintiffs whatever.

71 15th. That no facts are set up to show why the use of the name by said defendants is a wrong and injury to the plaintiffs or their associates, or fraud upon them and the public.

(C) 1st. That under the facts stated in the said petition the plaintiffs are not entitled to the relief prayed for in the first prayer of the petition; that under the facts stated in said petition the plaintiffs are not entitled to the relief prayed for in the second prayer of the petition, and the second prayer is too vague and general.

2nd. That there are no facts stated to justify the third prayer.

Wherefore, plaintiffs pray that the said petition be dismissed, and for costs.

BELL, PETTIGREW AND BELL.
Att'ys for Defendants.

Filed in office this the 13th day of August, 1906.

A. B. HARRISON, *D. Clerk.*

72 *(Answer.)*

(1) Defendants in answer to plaintiffs' petition say that for want of information sufficient to form a belief, they are unable either to admit or deny paragraphs 1, 2, 3, 4, 5, and 6.

(2) Defendant admits paragraph 7, so far as it alleges the intention by the defendants to incorporate, as alleged, and admits further that it derives no authority whatever from the plaintiff but denies the remainder of said paragraph.

(3) Defendant denies paragraphs 8, 9, 11 and 13.

(4) Defendant denies paragraph 10 of the said petition, except in so far as the same is modified by defendant's own statements of its organization, as is further set out in this answer.

(5) Defendant denies paragraph 12, except the statement that the plaintiffs are engaged in the work of charity and benevolence among themselves, but this charity and benevolence does not extend as far as the defendants and their associates.

And for further answer defendants say: that the Supreme Lodge Knights of Pythias of North America, South America, Europe, Asia and Africa, were incorporated October 10, 1889, by virtue of the Act of Congress of the United States of America, approved May 5th, 1870, and organized under said charter throughout the United States and other countries, in order to carry out their pur-

72½ pose of a charitable and fraternal organization which articles of incorporation are herewith shown to the court and marked Exhibit 1.

(6) That the said corporation was re-incorporated on the 14th day of December, 1903, in order that they might more perfectly comply with the laws of the various States relative to fraternal societies doing business therein, which re-incorporation was under the name of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, which certificates of incorporation is hereto attached and made part of this answer and marked Exhibit 2, the purpose of which organization is fully set out in article 3, of the said certificate of re-incorporation.

(7) That this corporation has been in active work ever since its organization on the 10th of October, 1889, and has extended it-self over the United States and in different countries of the world, and has established sub-ordinate lodges and has interfered with no other organization of like character, or any other character whatever, and that its sole purpose in asking incorporation under the laws of Georgia was to form a more perfect union among the subordinate lodges with a governing head, which should have authority and be amenable to the State laws of Georgia, and be able better to enforce obedience to such among its several members and subordinate lodges.

73 (8) That its signs, symbols, emblems and insignia, and its other paraphernalia have been adopted by the said corporation honestly and fairly, and it avers that it has a perfect right thereto.

Wherefore defendants pray that the said suit be dismissed and the defendants go without day.

BELL, PETTIGREW AND BELL,
Att'ys for Def'ts.

GEORGIA, *Fulton County:*

Personally appeared before the undersigned L. L. Lee, who being duly swon, says, that the facts stated in the above petition are true.

L. L. LEE.

Sworn to and subscribed before me, this 22nd day of Sept., 1906.

EDW. P. KING, JR.,
N. P., Fulton Co., Ga.

74 (EXHIBIT 1.)

Acts of Inc. 5, Folio 38.

The Supreme Lodge Knights of Pythias North and South America, Europe, Asia, and Africa.

"Certificate of Incorporation.

Recorded Oct. 10, 1889, 1:10 p. m.

This is to certify that the subscribers, being persons of full age, all of whom are citizens of the United States and a majority of them being citizens of the District of Columbia, pursuant to and in conformity with sections five hundred and forty-five (545) five hundred and forty-six (546) five hundred and forty-seven (547) five hundred and forty-eight (548) five hundred and forty-nine (549) five hundred and fifty (550) five hundred and fifty-one (551) and five hundred and fifty-two (552) of the Revised Statutes of the United States relating to the District of Columbia, do hereby associate themselves for the purpose set forth in the following articles, and are desirous of acquiring and enjoying the powers and immunities of a corporation or body politic in law for the furtherance of such purposes.

The subscribers do, therefore, on this the tenth day of October, A. D. 1889, hereby associate themselves for the objects and under the articles, conditions and names specified in the following articles:

75 Article I.

This corporation shall be known by the name of "The Supreme Lodge, Knights of Pythias of North America, and South America, Europe, Asia, and Africa, and shall have full power and authority to make, have and use a common seal with such devise and inscription as they may deem proper, and the same to break, alter and renew at their pleasure; and by the name, style, and title aforesaid,

shall be able and capable in law to sue and be sued, plead and be impleaded in any court or courts, before any judge or judges, justice or justices, in all manner of suits, complaints, pleas, causes, matters and demands whatsoever, and all and every matter or thing therein to do in as full and effectual a manner as any other person or persons, bodies corporate and politic, within the District of Columbia, and elsewhere where power and authority are conferred by the General Incorporation Act of May 5th, 1870, may or can do; and to make or adopt rules, by-laws and ordinances, and to do everything needful for the good government and support of the affairs of the said corporation.

And the managers and their successors shall be able and capable in law to take and receive, hold and enjoy all and all manner of lands, tenements, rents, annuities, franchises and hereditaments, and any sum and sums of money, and any manner and portion of goods and chattels, given or bequeathed to them to be employed
76 and disposed of according to the objects, articles and conditions hereof, or according to the articles and by-laws of this corporation, or according to the *articles and by-laws of this corporation, or according to the* will and intention of the donors, subject only to the limitations and restrictions, objects, purposes and purview of this charter.

Article II.

The term for which this corporation is organized to continue and endure is twenty years, to wit: the term beginning with the date of these presents:

Article III.

The object of this association is to promote the principles of Friendship, Fraternity, Benevolence and Charity; to uplift the fallen; to soften the asperities of life, to subdue party spirit, to destroy caste and color prejudices; to relieve the needs and afford succor to a brother; to elevate man to a higher plane of intelligence, morality and social equality, to minister to the sick and suffering, to bury the dead, and to provide mutual relief to its members, and endowments for their widows and orphans, by means of levying an assessment, annually or oftener, upon its members of three dollars ($3 00/100) or more.

77 ## Article IV.

In addition to the powers granted by law, the corporation hereby erected by the subscribers under the name, style and title aforesaid shall have the exclusive right, power and authority to establish Grand and Subordinate Lodges of The Knights of Pythias of North and South America, Europe, Asia and Africa, and Grand and Subordinate Courts of Calanthe; Grand and Subordinate Divisions, etc., as may be provided by the constitution and by-laws of this Corporation, which shall be constituted, chartered, regulated

and controlled by "The Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa, said Grand and Subordinate Lodges, Grand and Subordinate Courts of Colanthe, Grand and Subordinate Divisions, etc., shall be chartered and erected by the said "The Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa" at such times and places, and in such manner and form as may be provided by the Constitution and By-laws of said corporation hereby erected, or by a majority vote of a quorum of its members as provided in its constitution or by-laws, or by a majority vote of a quorum of its Board of Managers, as determined by the by-laws and constitution of the aforesaid corporation.

Article V.

The management of this Corporation shall be vested in a Board composed of twelve (12) managers and for the first year of
78 its existence, to wit: the year beginning with the date of these presents, the following named officers shall constitute the Board of Managers, viz: Elias A. Williams, M. D., Supreme Chancellor; Leonidas H. Wilson, Supreme Vice Chancellor; Thomas W. Stringer, Supreme Post Chancellor, Israel Derrick, Supreme Prelate; Geo. E. Jones, Supreme Master of Exchequer; Robert L. Reed, Supreme Keeper records and seals; Obediah M. Wood, Supreme Lecturer; Jas. B. Gabe, Supreme Master-at-Arms; Spencer R. Riley, Supreme Inner Guard; Benjamin A. Mason, Supreme Outer-Guard; Rudolph B. Baquie, General and Worthy Counsellor; M. A. Williams, Worthy Register of Deeds, the successors to the above named Board of Managers shall be selected annually at such time and place as a majority of the representatives may decide.

In testimony whereof we have hereunto set our hands this the tenth day of October, A. D. 1889.

E. A. WILLIAMS.
HORATIO N. SMITH.
his
GEO. W. x SMITH.
mark
HORACE BROWN.
his
DE WITT x KENNEY.
mark
M. A. WILLIAMS.
FRANK R. ROSS.
W. H. SIMPSON.
W. H. THOMAS.
GEO. W. BROWN.
WILLIAM D. NORRIS.
JAS. E. MORGAN.
HENRY TUDY.
ROBERT F. JOHNSON.

[SEAL.]

79 DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered on the tenth day of October, A. D. 1889, before me Lewis H. Douglas, a Notary Public, appeared the above named Elias A. Williams, Geo. W. Brown, Geo. W. Smith, Frank R. Ross, Jas. E. Morgan, W. H. Thomas, M. A. Williams, Horatio N. Smith, Wm. D. Norris, W. H. Simpson, Horace Brown, Henry Tudy, De Witte Kenney, Robt. F. Johnson, persons known to me to be the same whose signatures are appended to the foregoing certificate, and they severally before me made and signed the said certificate and acknowledged the same to be their certificate act and deed.

Witness my hand and notarial seal the date above written.

[NOTARIAL SEAL.] LEWIS H. DOUGLAS,
Notary Public, D. C.

OFFICE OF THE RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of a certificate of incorporation, and of the whole of such Certificate, as received for record in this office at 1.10 P. M. the 10th day of October, A. D. 1889.

In testimony whereof, I have hereunto set my hand and affixed the seal of this office, this 2nd day of July, A. D. 1906.

[SEAL.] (Name illigible,)
Deputy Recorder of Deeds, Dist. of Columbia.

80 (EXHIBIT 2.)

Certificate of Reincorporation.

The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia.

This is to certify that the subscribers, being persons of full age, citizens of the United States, a majority of whom are citizens of the District of Columbia, desiring to associate themselves, and by these presents do hereby associate themselves, for the purpose set forth in the following articles of reincorporation, and desiring to acquire and enjoy the powers and immunities of a corporation, and to be a body politic and corporate, according to laws for the furtherance of such purposes hereinafter more fully set forth, the subscribers do therefore on this the 14th day of December, A. D. 1903, hereby by these presents associate themselves for the purposes, and under the name, articles and conditions specified in the following articles, in accordance with sections five hundred and forty-five and five hundred and fifty-two inclusive, of the Revised Statutes of the United States relating to the District of Columbia, and amendments thereto, and in accordance with the compiled Statutes as directed by Congress of March 2nd, A. D. 1889, Chapter 392, and in force

in the District of Columbia under Corporations, Class three, and sections Twenty-seven to Thirty-four inclusive, relating to
81 Benevolent Associations.

Article I.

A. This body politic and corporate shall be known in law by the name of The Knights of Pythias, of North America, South America, Europe, Asia, Africa and Australia.

B. This corporation and its successors shall have full power and authority to make, have and use a common seal, with such device and inscription as they may deem proper, and the same to alter and change at their pleasure, by the name and title aforesaid, shall be able and capable in law and chancery to sue and be sued, plead and be impleaded, in any court or courts, before any judge or judges, justice or justices, in all manner of suits, complaints, pleas, causes, matters and demands whatsoever, and all and every matter or thing therein to do in as full and effectual a manner as any other person or persons, bodies politic or corporate, within the District of Columbia and elsewhere, where power and authority are conferred by the General Incorporation Act of May 5th, 1870, and amendments thereto, may or can make or adopt a Constitution, By-laws and Ordinances, and to do anything needful for the good government and support of the affairs of the said corporation.

C. The managers or their successors shall be able and capable in law to take, receive, hold and enjoy in all manner, lands,
82 tenements, rents, annuities, franchises and hereditaments any sum or sums of money, and any manner and portion of goods and chattels given and bequeathed to them, to be employed, used or disposed of according to the objects, articles and conditions hereof, according to the Articles, Constitution, By-laws and Ordinances of this corporation, or according to the will and intention of the donors, subject only to the limitations and restrictions, objects, purposes and purview of this charter.

D. This corporation, as aforesaid, is the successor of and is reincorporated instead of the corporation known heretofore as the Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa, filed of record the 10th day of October, A. D. 1889, and recorded in Liber 5, Fol. 38, in the Recorder of Deeds' Office in the County of Washington, and District of Columbia.

Article II.

The period for which this corporation is organized to continue and endure is, to wit: the term beginning with the date of these presents, and at the pleasure of this corporation or their successors.

Article III.

The particular business and objects of this body politic and corporate is to promote the principals of Friendship, Charity, Benevo-

lence, Honor, Justice, Loyalty, Fidelity, Harmony and Love;
83 to uplift the fallen, to soften the asperities of life, to subdue party spirit, to destroy caste and prejudice, to relieve the needs and afford succor to a brother, to elevate man to a higher plane of intelligence, morality and social equality, to administer to the sick and suffering, to bury the dead, to provide mutual relief to its members, an endowment for their widows, orphans, heirs or legal representatives, to provide further for the disabled, indigent, or sick or suffering members, or their widows, and the orphan- of the members, by purchasing or receiving land or lands, or the erecting or purchasing of a building or buildings, sanitarium or sanitariums. For the use of this body politic and corporate to receive or purchase land or lands, temple or temples to be used, employed or disposed of for the purpose as provided for by the laws of the corporation, or by any other means that may be necessary to the furtherance of the principals as are herein stated.

Article IV.

A. In addition to the powers granted by law this corporation hereby created by the subscribers under the name, style and title aforesaid, to wit: The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, shall have the exclusive right, power and authority to continue the existence of the Supreme Lodge, as is now constituted and created by represen-
84 tation from the subordinate body or bodies that are designated by the Constitution, By-laws, and ordinances as or may be adopted by the body.

B. The said Supreme Lodge is to be the source of all authority in this body politic and corporate, and shall have the exclusive right, power and authority to establish and create Grand and subordinate Lodges, a Supreme Court, Grand and Subordinate Courts of Calanthe; Brigades, Regiments and Companies of the Uniform Rank Department, and Endowment Department or Departments wherever they deem fit and proper, and as may be provided by the Constitution, By-laws and Ordinances of this corporation, and which shall be constituted and chartered, regulated and controlled by the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, at such time and place and in such manner and form as may be provided by the Constitution and By-laws of said corporation, or by a majority vote of a quorum of its members as may be provided for in its Constitution or By-laws, or by a majority vote of a quorum of its Board of Managers as determined by the Constitution and By-laws of the aforesaid corporation.

Article V.

A. The management of this corporation shall be vested in a Board of Management composed of thirteen managers hereinafter named, and their successors. The year beginning with the
85 date of these presents, and said managers may legally act in the interim after the expiration of the ending of the year

until August, A. D. 1905, when The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, a convention of the Supreme Lodge thereof, as is now constituted, shall meet in the City of Pittsburg, County of Alleghany, and State of Pennsylvania, and elect their officers who are herein designated as the Board of Managers, and biennially thereafter.

B. The Board of Managers for the beginning of the term, and the date of the articles shall be, to wit: Sam'l W. Stark, Supreme Chancellor; Lewis M. Mitchell, Supreme Vice Chancellor; Jas. C. Ross, Past Supreme Chancellor; Chesley D. White, Supreme Prelate; Christopher K. Robinson, Supreme Keeper of Records and Seal; Jno. H. Young, Supreme Master of Exchequer; David S. Miller, Supreme Master at Arms; Frank Brown, Jr., Supreme Inner Guard; Dennis Taylor, Supreme Outer Guard; Jno. Mitchell, Jr., Supreme Lecturer; Robert F. Boyd, Supreme Medical Registrar; Sam'l A. T. Watkins, Supreme Attorney, and Robert R. Jackson, Major General of the Uniform Rank. The successors of the above named Board of Managers shall be elected biennially thereafter, beginning the month of August, A. D. 1905, at such time and place as a majority of the representatives of said convention may decide, according to the Constitution and By-laws that may be made and provided by said corporation.

86 In testimony whereof, we have hereunto set our hands this the 14th day of December, A. D. 1903, in the County of Washington, and District of Columbia.

SAMUEL W. STARKS.
SAMUEL A. T. WATKINS.
HORATIO N. SMITH.
JOS. M. CONWAY.
WM. H. JOHNSON.

[SEAL.]

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that on this the 14th day of December A. D. 1903, before me, Robt. H. Terrell, Justice of the Peace, for and in the County of Washington and District of Columbia, appeared the above named Samuel W. Starks, Samuel A. T. Watkins, Horatio N. Smith, Jos. M. Conway, Wm. H. Johnson, persons known to me to be the same whose signatures are appended to the foregoing certificate, and they severally before me made and signed the said certificate, and acknowledged the same to be their certificate, act and deed.

Witness my hand and notarial seal this, the 14th day of Dec., A. D. 1903.

ROBERT H. TERRELL,
Justice of the Peace, District of Columbia.

[JUSTICE OF THE PEACE SEAL.]

87 OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of a certificate of reincorporation, and of the whole of such certificate as received for record in this office at 11:24 A. M. the 14th day of December, A. D. 1903.

In testimony whereof, I have hereunto set my hand and affixed the seal of this office, this 2nd day of August, A. D. 1906.

____ ____,
Deputy Recorder of Deeds, Dist. of Col.

[SEAL.]

Filed in office this the 22nd day of September, 1906.
F. M. MYERS, *D. Clerk.*

(Amended Petition.)

GEORGIA, *Fulton County:*

Now comes The Supreme Lodge Knights of Pythias, in its corporate name and capacity and re-avers the allegations in the original petition filed in the above stated case, and adopts and joins in the prayers set forth in said petition, and prays that it be made a party plaintiff, and that said petition may proceed in the name and behalf of said The Supreme Lodge Knights of Pythias and the other petitioners named therein.

88 And now comes also the petitioners named in the original petition in the above stated case, and move that said The Supreme Lodge Knights of Pythias be made a party plaintiff to said petition, and unite with the Supreme Lodge Knights of Pythias in the foregoing prayer that it be made a party plaintiff to the above stated case, and that said case proceed as prayed.

And your petitioner, The Supreme Lodge Knights of Pythias and the other plaintiffs in the original petition named, by way of amendment to said petition, respectfully show:

(1) That prior to the year 1880, said The Supreme Lodge Knights of Pythias organized and established an insurance branch know and called the Endowment Rank and a military branch known as the Uniform Rank, and have maintained said branches since their organization to this day; that no person has ever been allowed or is now allowed to become or remain a member of either of said branches of said fraternal order, unless he was and continued to be a member in good standing of some subordinate lodge organized and existing under and by virtue of the authority of said The Supreme Lodge Knights of Pythias.

(2) That since the organization of said Endowment Rank and through said Endowment Rank said The Supreme Lodge Knights of Pythias has paid more than $24,180,000 to the beneficiaries of more than 12,523 members of said Endowment Rank. That there are now more than 80,000 members of said Endowment Rank, carrying a total endowment of more than

89

$123,500,000. Petitioners show that said insurance branch, continuously since its organization, has been known and called the Endowment Rank Knights of Pythias, and that it is entitled to the exclusive use and benefit of said name and designation, and that the use of said name and designation or any colorable imitation thereof by any other organization or fraternity is and will be a wrong and injury to said The Supreme Lodge Knights of Pythias and said Endowment Rank and the members thereof, and the damage whereof to your petitioners is not capable of ascertainment.

And your petitioners show that the defendants named in their original petition and their associates are maintaining an insurance branch or department concerning which they are using the name and designation endowment rank Knights of Pythias, or words of similar import, and that the said name and designation so used by said defendants is identical with, or a colorable imitation of the name and designation used as aforesaid by The Supreme Lodge Knights of Pythias for its said insurance branch.

(3) That the defendants and their associates named in the original petition in the above stated case, have organized and are
90 maintaining a branch or department in, of and concerning which they use the name and designation Uniform Rank Knights of Pythias, and in and concerning which they are using and aver it their intention to continue to use colors, flags and insignia, identical in design with the colors, flags and insignia adopted and use by your petitioner The Supreme Lodge Knights of Pythias in its aforesaid branch known as the Uniform Rank. That there is nothing either in design or inscription, in the colors, flags and insignia, so used by said defendants and their associates to indicate that they are other than the colors, flags and insignia of your petitioner, The Supreme Lodge Knights of Pythias, or that the persons using them are not members of the Fraternal Order of Knights of Pythias, of which said The Supreme Lodge Knights of Pythias is the Supreme Government.

(4) Your petitioners show that there is nothing in the color or design of the emblems and insignia, or the inscriptions upon them, which are being used by said defendants and the associates, as alleged in the original petition in this case, and in this amendment, to indicate that they are not identical with the emblems and insignia of your petitioners, The Supreme Lodge Knights of Pythias, and Grand Lodge Knights of Pythias of Georgia, or to indicate that they are not being used by authority of said The Supreme Lodge Knights of Pythias. And petitioners aver on information and belief
91 that it was and is the purpose and intention of said defendants, their associates and predecessors, in the adoption and use of the name, emblems and insignia, as hereinbefore averred, to adopt and use a name, emblems and insignia substantially identical with the name, emblems and insignia adopted and used by your petitioner, The Supreme Lodge Knights of Pythias and the Grand and Subordinate lodges organized by its authority, and by the imitation of the name, emblems and insignia of your petitioners represent to the public, that they, the said defendants and their associates,

are associated with and organized by the authority of your petitioner, The Supreme Lodge Knights of Pythias. And petitioners aver that such imitation is a fraud upon the public and upon your petitioners, and upon the members of subordinate lodges of the Order of Knights of Pythias organized and existing in the State of Georgia, under and by virtue of the rights and authority of your petitioner, The Supreme Lodge Knights of Pythias.

(5) Petitioners further show that they have had the continuous and exclusive use, in the State of Georgia and the United States of America, of the name Supreme Lodge Knights of Pythias and of the name Grand Lodge Knights of Pythias of Georgia, and of the distinctive word "Pythias" used in said names, for more than ten years prior to the use of either of said names, or of said distinctive word "Pythias" in any name by said defendants or their associates,
92 and before the organization of any society or corporation from whom said defendants or their associates may claim succession or right of existence. And your petitioners have likewise had the continuous and exclusive use of the name Endowment Rank Knights of Pythias to designate the insurance branch of petitioners' Order of Knights of Pythias, and of the name Uniform Rank Knights of Pythias to designate the military branch of your petitioners' Order of Knights of Pythias.

Wherefore your petitioners pray that they may have the relief prayed in their original petition, and further pray that said defendants and each of them and their associates and successors be perpetually enjoined from using the name Endowment Rank Kights of Pythias to designate an insurance branch of any society or corporation of which they may be or become members, or with which they may be associated, and from using the name Uniform Rank Knights of Pythias to designate a military or other branch of any society or corporation of which they are or may become members, or with which they may be connected, and from using any name, emblems or insignia in connection with any society or corporation that are substantially identical with the name, emblems or insignia of petitioners, and from using any colorable imitation thereof.

JNO. P. ROSS,
HAMILTON DOUGLAS,
Att'ys for the Supreme Lodge, Knights of Pythias, and for Plaintiffs in Original Petition.

93 GEORGIA, *Fulton County:*

Personally appeared Hamilton Douglas, who, being first legally sworn, says on oath, that he is now and has been for more than ten years a member of The Supreme Lodge Knights of Pythias, one of the petitioners named in the foregoing amendment, and that he is now and has been for seventeen (17) years a member of a subordinate lodge of the Order of Knights of Pythias in the State of Georgia, organized and existing under and by virtue of the authority and control of said The Supreme Lodge Knights of Pythias, and he says that the allegations in the foregoing amendment are true as

therein alleged. And deponent further says that he has carefully read the original petition in the case to which the foregoing is an amendment, and that the allegations of fact in said original petition are true as therein alleged.

HAMILTON DOUGLAS.

Sworn to and subscribed before me this 24th day of November, 1906.

T. H. JEFFRIES,
N. P., Fulton County, Ga.

94 Upon considering the foregoing motion and amendment, it is ordered that the Supreme Lodge Knights of Pythias be and it is hereby made a party plaintiff to the original petition in the case stated in said motion and amendment, and that said case proceed in the name of said The Supreme Lodge Knights of Pythias and the petitioners named in the original petition as prayed. It is further ordered that said foregoing amendment be and it is hereby allowed and ordered filed.

This 24th day of November, 1906.

J. T. PENDLETON,
Judge S. C. A. C.

GEORGIA, *Fulton County:*

Due and legal service of the foregoing motion and amendment and order allowing the same is hereby acknowledged, and further service waived.

This Nov. 3rd, 1906.

BELL, PETTIGREW AND BELL,
Att'ys for Def'ts.

Filed in office this the 24th day of November, 1906.

T. H. JEFFRIES, *D. Clerk.*

95 (*Amended Petition.*)

GEORGIA, *Fulton County:*

Now comes the petitioners in the above stated case and by leave of the court, respectfully show, by way of amendment to their petition, as follows:

(1) That the Grand Lodge Knights of Pythias of Georgia and the subordinate lodges of Knights of Pythias instituted and existing by and under the jurisdiction of said Grand Lodge are not incorporated bodies, but that said Grand Lodge and subordinate lodges constitute a voluntary association in the State of Georgia, organized and existing by the authority and as a part of the order of Knights of Pythias, as averred in said petition. That said association has never been chartered under the laws of Georgia, and said Grand Lodge and subordinate lodges have not been chartered

under the laws of Georgia, but were organized and exist as a part of the order of Knights of Pythias, of which the Supreme government, known as the Supreme Lodge, has been chartered under the name of the Supreme Lodge Knights of Pythias, as in said petition alleged.

(2) That said Grand Lodge Knights of Pythias of Georgia is composed of representatives from and elected by the subordinate lodges in the State of Georgia, and the officers and committees duly elected and appointed by said Grand Lodge pursuant to the
96 laws of the order, and no member of a subordinate lodge is elligible to membership in said Grand Lodge, unless he has served as the chief executive officer of a subordinate lodge known as chancellor commander, and thereby become a past chancellor of a subordinate lodge. The said Supreme Lodge Knights of Pythias is composed of representatives from and elected by the Grand Lodge of the several States and Territories of the United States, and other domains established by said order and the officers and committees duly elected and appointed by said Supreme Lodge pursuant to the laws of the order, and no person is eligible to membership in said Supreme Lodge Knights of Pythias unless he has served as the chief executive officer of a Grand Lodge of said order, known as Grand Chancellor, and thereby become a Past Grand Chancellor of a Grand Lodge of said Order. Provided, however, that no person can become or continue to be a member of said Supreme Lodge or of any Grand Lodge thereof, unless he is and continues to be a member in good standing of a subordinate lodge of said order of Knights of Pythias, the termination of membership in a subordinate lodge, for any cause, ipso facto terminating the membership in the Supreme and in the Grand Lodges of said order.

(3) That of the more than 12,000 members of the subordinate lodges of said order of Knights of Pythias in Georgia, only about 2,000 are eligible to membership in and are members of said
97 Grand Lodge Knights of Pythias of Georgia, and not more than twenty are eligible to membership in said Supreme Lodge Knights of Pythias, and only three are members of said Supreme Lodge, which membership they hold by virtue of their election by said Grand Lodge as its representatives to said Supreme Lodge.

(4) That membership in a subordinate lodge of said order is a prerequisite to obtaining and continuing a certificate of life insurance in the Endowment Rank of said Supreme Lodge Knights of Pythias. And that of the members of the subordinate lodges of said order in Georgia more than 2300 are now members of said Endowment Rank, carrying insurance on their lives for the benefit of those having insurable interests in their lives of an aggregate sum of more than $4,200,000.00. That a large number of the members of said subordinate lodges in Georgia are members of the Uniform Rank of said Supreme Lodge Knights of Pythias, membership in a subordinate lodge being a prerequisite to membership in said Uniform Rank.

(5) That your petitioners, T. H. Nickerson, D. J. Bailey, Jno. P.

Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and Geo. T. Cann, are not members of or eligible to membership in said The Supreme Lodge Knights of Pythias, but your said named petitioners are members of said Grand Lodge Knights of Pythias of Georgia, and are members in good standing of subordinate lodges of said Grand Lodge in Georgia, and, except one, mem-
98 bers of the Endowment Rank of said Supreme Lodge Knights of Pythias. And your said named petitioners and their associates and fellow members of said Grand Lodge Knights of Pythias of Georgia and of said subordinate lodges thereof in Georgia, and of said Endowment Rank each and all have a personal right and beneficial interest in the integrity and name of said order of Knights of Pythias, and in preventing any usurpation of or infringement of the name, emblems or insignia of said order of Knights of Pythias and of said Grand Lodge Knights of Pythias of Georgia. That there is no corporate body in or under the laws of Georgia authorized or empowered to prosecute a suit to preserve and enforce the rights and remedies of your said named petitioners and their associates, and it is impracticable if not impossible for such suit to be prosecuted in names of all of your said petitioners, associates and fellow members. That the rights and interests of your said named petitioners and their said associates are identical, and your said named petitioners bring said petition on behalf of themselves and of their aforesaid associates and fellow members of said Grand Lodge Knights of Pythias of Georgia and said subordinate lodges thereof.

JNO. P. ROSS,
HAMILTON DOUGLAS,
Petitioner's Attorneys.

99 The foregoing amendment allowed and ordered filed. This 26th day of November, 1906.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this the 26th day of November, 1906,

T. H. JEFFRIES, *D. Clerk.*

(*Answer to Amended Petition.*)

GEORGIA, *Fulton County:*

The defendants by leave of the court amend their answer as follows:

(10) That paragraphs 1, 2, 3, 4 and 5 of the amendment of the plaintiffs are denied.

(11) That the order of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia is established by and among the colored people alone, which include the negro race, and the Asiatic races, and is organized for the purpose of disseminating friendship, charity and benevolence.

(12) That the Supreme Lodge of said order was organized on or about Oct. 10, 1889, under the act of incorporation in the District of Columbia by Act of Congress of the United States of America. Approved May 5th, 1870, and the said corporation as organized, began immediately and kept on continuing organizing branch lodges in different States of the United States, until its reorganization
100 without breaking its continuity under the act of Congress Dec. 14, 1903, under the name of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, and has established branch lodges covering many States, to wit: Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Iowa, Indian Territory, Kansas, Kentucky, Louisiana, Massachusetts, Rhode Island, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma Territory, Eastern Pennsylvania, Western Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

(13) These organizations have been in working order for many years, beginning with Lightfoot Lodge No. 1, in the State of Mississippi on March 26th, 1880. That the said order in the jurisdiction of Georgia was organized and began work in June 1886, and has continued ever since.

(14) That the said order has a membership in the United States of 80747, and in the State of Georgia of 11805, and in furtherance of the purpose of its obligations of friendship, charity and benevolence it has dispensed the charities in manner, form and amounts as shown in Exhibit No. 4, made part of the answer.

(15) That this order has never attempted to confuse its order with that represented by the plaintiffs, and as a matter of fact, in the history of this order, and that of the plaintiffs, there has
101 never been any confusion or mistaking one for the other, that the members of the two orders belong to different races, that there has never been an application for membership by a caucasian in the defendants' order. There is no member of the negro race in the order represented by plaintiffs, that there has been nothing done by defendants' order to lead the public to suppose that they were the order represented by the plaintiffs, that all official proceedings of the said defendants' order distinctly notified the public that this order was not the same as the plaintiffs' order, that no one could ever think that the two orders were the same, or that one might become a member of one order when they joined the other, nor is there any connection whatever between the two orders.

(16) That the field of operation of the two orders is absolutely different, one being confined to the white race and the other to the colored race.

(17) That the order represented by the defendants has been in active operation and enjoying all the rights and privileges of their organization since March 26, 1880, and under the jurisdiction of the Supreme Lodge as chartered, since October 10, 1889, publicly and to the knowledge of all mankind, and it would be inequitable and unjust for the plaintiffs to maintain this suit on account of the

lapse of time, and the defendants plead plaintiffs' laches in
102 bar of any equitable relief.

BELL, PETTIGREW & BELL, AND
H. L. JOHNSON, *Att'ys for Def'ts.*

GEORGIA, *Fulton County:*

In person appeared before the undersigned, Chas. D. Creswill, who being duly sworn says that he is one of the defendants in the above stated case, and that the facts stated in the above answer are true.

C. D. CRESWILL.

Sworn to and subscribed before me, this 26th day of Nov. 1906.

T. H. JEFFRIES,
N. P. Fulton County, Ga.

Filed in office this the 26th of November, 1906.

T. H. JEFFRIES, *D. Clerk.*

(*Judgment.*)

After hearing the evidence and argument of counsel: It is ordered that the injunction be denied and the restraining order heretofore granted be revoked.

December 12th, 1906.

J. T. PENDLETON,
Judge S. C. A. C.

103 (*Questions & Verdict.*)

GEORGIA, *Fulton County:*

(1) Is the proposed corporate name of the defendants an infringement on the name of the plaintiff's association?

Yes.

(2) If it is such an infringement would it affect or injure plaintiff in any property right? If so, what?

Yes, in name.

(3) If so, is there any fraudulent purpose or design *to* so infringing?

Yes, there is.

(4) Are any of the emblems or insignia of defendants the same as any of those used by plaintiffs, and if so, does such use injure plaintiff in any property right?

Yes.

(5) Has the plaintiff acquiesced in the use by defendants of the name and insignia &c., and if so, how long?

No.

(6) Is it true that since the organization of the Order represented by petitioners and its introduction into the State of Georgia, it has been called the Order of Knights of Pythias, and that its members have been known as Knights of Pythias or Pythian Knights indifferently?

Yes.

(7) Is it true that "Pythias" is the distinctive word in the name of the Order represented by petitioners, which ordinarily distinguishes it from the name and style of other fraternal orders in the State of Georgia and in the United States?

Yes.

(8) Is it true that the name set forth in defendants' petition for incorporation is substantially identical with the name and
104 style of your petitioner's the Grand Lodge Knights of Pythias of Georgia?

Yes.

(9) Is it true that the name set forth in defendants' said petitioner for incorporation is a colorable imitation of the name and style of your petitioner. The Grand Lodge Knights of Pythias of Georgia?

Yes.

(10) Is it true that the use by defendants and their associates of the name which they are seeking incorporation would work a fraud upon your petitioners and their associates and the public, in that the name under which defendants propose to incorporate is a colorable imitation of the name of petitioners?

Yes.

(11) Is it true that defendants can not show any organization of any kind until 1880, and until long after the Grand Lodge Knights of Pythias of petitioners was organized in the State of Georgia?

Yes.

(12) Is it true that the use of the word "Pythias" immediately in conjunction with the words "Knights of" in the name under which defendants and their associates are seeking incorporation is a colorable imitation of the name of your petitioner, the Grand Lodge Knights of Pythias of Georgia?

Yes.

(13) Is it true that defendants of the "Supreme Lodge of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia" are wearing emblems and insignia identical in color, design and lettering with the emblems and insignia
105 of petitioners, the Grand Lodge Knights of Pythias of Georgia; and is it true that the wearing and use of such insignia and emblems work a fraud upon either petitioner or their associates or the public?

Yes.

(14) Have the defendants used the name Knights of Pythias or the letters K. of P. without any affix or suffix thereto?

Yes.

G. W. FOOTE, *Foreman.*

May 27th, 1908.

(Final Decree.)

GEORGIA, *Fulton County:*

Upon considering the pleadings, evidence and verdict in the above stated case, it is thereupon ordered, adjudged and decreed by the Court as follows:

(1) That the defendants, Chas. D. Creswill, Geo. N. Stoney, Geo. R. Hutto, N. B. Williamson, Columbus J. Smith, Fred N. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee, and each of them and their associates, confederates and successors, be, and they are hereby perpetually enjoined as in said petition prayed, and especially as follows:

A. That said defendants and their associates, confederates and successors are hereby perpetually enjoined from prosecuting
106 their petition for incorporation, and from further proceeding to become incorporated in Fulton County, or elsewhere in the State of Georgia, under the name and style of "The Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia" or using any name or title embracing the word "Pythias" in immediate conjunction with the words "Knights of", or under any name or title in which the word "Pythias" is the distinctive and cardinal word, or under any name which is substantially identical with, or a colorable imitation of the name of the petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge Knights of Pythias of Georgia.

B. That said defendants, their associates and successors and each of them be, and they are hereby perpetually enjoined from further using in their voluntary organization said name of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia, and in the conduct of its affairs, using any name embracing the word "Pythias" in immediate conjunction with the words "Knights of", or embracing said word "Pythias" as the cardinal distinctive word of the name or any other name which is substantially identical with or in colorable imitation of the name of the petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge Knights of Pythias of
107 Georgia. The said defendants, their associates and successors and each of them are further perpetually enjoined from instituting subordinate lodges under the name and designation of the Order of Knights of Pythias, and from further authorizing the continued existence of subordinate lodges under the jurisdiction of said voluntary organization, of which defendants and their associates are members, using the name and designation of Knights of Pythias, or any name in which the word "Pythias" is the cardinal and distinctive word, or any name which is a colorable imitation of the name of petitioners, the Supreme Lodge Knights of Pythias, and the Grand Lodge Knights of Pythias of Georgia, and of subordinate lodges instituted by said petitioner's authority. And said defendants, their associates and successors, and each of them are further perpetually

enjoined from designating and calling themselves, and from authorizing their associates and members of subordinate lodges organized and existing by authority of the voluntary organization of which said defendants are members to designate and call themselves Knights of Pythias or Pythian Knights, or any other name that is a colorable imitation thereof, and from designating their voluntary organization or its subordinate lodges by the initials K. P. or K. of P., and from using a seal which is a colorable imitation of the seal of the petitioners, the Grand Lodge Knights of Pythias of Georgia,
and from using and wearing emblems and insignia, buttons,
108 pins, rings, and watch charms, which in color and design are substantially similar to or a colorable imitation of the emblems and insignia, buttons, pins, rings and watch charms adopted used and worn by the members of petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge Knights of Pythias of Georgia, and the members of the subordinate lodges organized by authority of said petitioners; and the said defendants, and each of them, their successors and associates are perpetually enjoined from authorizing or permitting the further use and wearing of such emblems and insignia by members of subordinate lodges instituted by and existing under the authority of said voluntary organization of which the defendants are officers and members.

C. That said defendants and each of them and their associates and successors be, and they are hereby perpetually enjoined from using the words Knights of Pythias in immediate conjunction, or the word "Pythias" as the cardinal distinctive word in any name, or as a designation of any insurance, military or other branch of the voluntary organization of which said defendants and their associates are officers and members; and from using any name, flags, emblems, and insignia that are substantially identical with or a colorable imitation of the name, flags, emblems, or insignia of petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge
Knights of Pythias of Georgia, in any insurance and military
109 branches of said petitioners, in connection with any society or corporation of which defendants are officers or members.

(2) In order that the voluntary organization of which the defants are officers and members may have a reasonable time in which to select and adopt some other name and make such changes in its laws as may be necessary in obedience to this decree, and not hereby disorganize said organization which defendants are members of, or stop its said association from the prosecution of the work in which it is engaged:

It is hereby adjudged and decreed: That the injunction decreed in subsections B and C, paragraph one hereof, shall be in abeyance and no penalty shall be visited upon the defendants, their associates and successors, for disobedience thereof until the first day of June, 1909. And that on and after said First day of June, 1909, this suspension of said injunction shall cease and determine, and said injunction shall be of full and final force and effect, perpetually after said date, and the defendants and each of them, their associates and successors

are and shall be subject to all the pains and penalties provided by law for any disobedience of said injunction.

(3) That this decree shall have the force and effect of the States writ of injunction, without issuance of such writ; provided, however, that the writ of injunction, according to the terms of this
110 decree, shall issue out of this court, and be further served upon the defendants and their associates and successors, at any time on motion of petitioners.

(4) That the petitioners have and recover of the defendants all of the costs in this behalf incurred, to wit: — Dollars, to be taxed by the clerk of this court.

In open court, this tenth of June, 1908.

J. T. PENDLETON,
Judge S. C. A. C.

(Motion for New Trial.)

GEORGIA, *Fulton County*:

The defendants being dissatisfied with the verdict of the jury upon the questions submitted now at the term at which the said trial was had, and before the final adjournment thereof, and within thirty days from the said trial, and moves the court for a new trial upon the following grounds, to wit:

(1) Because the verdict is contrary to evidence and without evidence to support it.

(2) Because the verdict is strongly and decidedly against the weight of evidence.

(3) Because the verdict is contrary to law and the principles of justice and equity.

111 Wherefore movant prays that these, his grounds for new trial, be inquired of by the court, and that a new trial be granted him.

This the 10th day of June, 1908.

BELL, PETTIGREW & BELL,
Att'ys for Movant.

Read and considered. It is ordered that the plaintiff, the Grand Lodge Knights of Pythias, et al. show cause before me at the court house, in Fulton County, at ——1/2 o'clock, on the 29th day of June, 1908, why the foregoing motion should not be granted.

It is further ordered that the plaintiff's attorneys of record be served with a copy of this motion and order 10 days before the date for the hearing as fixed above, and that this order act as a supersedeas until the further order of the court. Ordered further that movant have until the actual hearing of this motion, whether in term or vacation, to prepare and present for approval and filing, a brief of evidence in said cause, and it is further ordered that the defendant have until the actual hearing of this motion to amend the same at any time at and before the final hearing. This 10 day of June, 1908.

J. T. PENDLETON,
Judge S. C. A. C.

Service of the within motion for new trial and rule nisi
112 thereupon acknowledged, and copy and all other or further service or notice waived.
This 10th day of June, 1908.

JNO. P. ROSS,
HAMILTON DOUGLAS,
Att'ys for Pl'ff.

Filed in office this the 10th day of June, 1908.
T. H. JEFFRIES, *D. Clerk.*

(Amended Motion for New Trial.)

GEORGIA, *Fulton County*:

The movant by leave of the court amends his motion for a new trial by adding thereto the following grounds:

(4) Because the answer of the jury to the first question propounded is contrary to law, without evidence to justify it, and contrary to the charge of the court on that subject, which charge was as follows: "an infringement upon a trade name would be such a colorable imitation of the name that the general public in the exercise of a reasonable care might think it was the name of the plaintiffs," and because there was no evidence of any effect or opinion created upon the general public.

(5) Because the answer of the jury to question No. 2 is contrary to law and without evidence to support it, and because the
113 question is not there answered, inasmuch as it merely assumed that the name is a property right without distinguishing the specific property right called for by the question, and because under the law some definite property right and injury to property has to be shown, and not merely the empty shadow of the name, and because there is no evidence of any property right involved or infringed upon by the defendants in the use of such name; and because it is contrary to the charge of the court upon that subject, to wit:

"If they have no property right in the name under the instructions which I have given you and the evidence, you will answer this question No."

(6) Because the answer of the jury to the third question is contrary to law, and cocntrary to the evidence and without evidence to support it, and contrary to the charge of the court on that subject as follows: "Fraud upon the part of the defendants would be a use of the name of the plaintiffs, or an infringement thereof with the intent to make the impression upon the general public that their association and the plaintiffs' association were the same general order," and contrary to the charge of the court because there is no evidence of the said intent, nor is there any evidence of any impression upon the general public, and the said answer is also contrary to the following charge of the Court: "that they should
114 determine whether or not this infringement, if there has been any infringement, had a fraudulent purpose or design

on the part of the defendants," inasmuch as there is no evidence of any such fraudulent purpose or design.

(7) Because the answer of the jury to the fourth question is contrary to law, and contrary to the evidence, there being no evidence of any injury to the plaintiffs, in any property right.

(8) Because the answer of the jury to the fifth question is contrary to law and contrary to the evidence, the evidence being undisputed that the defendants have used their name and insignia since the year 1880, and in the State of Georgia since the year 1886, and to the knowledge of the plaintiffs and with their acquiescence; and contrary to the charge of the court on this subject as follows:

"and if they knew of that use and took no steps to prevent it that would be acquiescing, and because this answer fails to show how long their acquiescence continued, whereas, from the undisputed testimony it is shown that their acquiescence continued from 1880 until the time of the filing of this suit, and still continues all over the United States, except in the State of Georgia."

(9) Because the answer to the sixth question is contrary to the evidence and without evidence upon the subject, and because
115 said answer is not called for by the pleadings in the case and is of no value for the foundation of a judgment in this case.

(10) Because the answer to question seven is without evidence to support it, nor is it called for by the pleadings nor is it such an answer as a judgment could be founded on in this case.

(11) Because the answer to question eight is contrary to law, contrary to the evidence and without evidence to support it, and contrary to the charge of the court, because the court practically charged them that there was no substantial identity in the names, but authorized them to consider this question "only with reference to colorable imitation," which instruction is found in the special instructions under question eight.

(12) Because the answer of the jury to question nine is contrary to law and to the evidence, and without evidence to support it, and contrary to the charge of the court on that subject as follows: "an infringement upon a trade name would be such a colorable imitation of the name, that the general public in the exercise of reasonable care might think it was the name of the plaintiffs," and also especially because there was no evidence that the said name is a trade name. There was no evidence of any effect upon the general public, or as to what the general public might think, and because it is contrary to the following charge, to wit: "you are to
116 answer that question from the evidence in the light of those instructions."

(13) Because the answer of the jury to question ten is contrary to the evidence and without evidence to support it, contrary to law and contrary to the following charge of the court on that subject, to wit: "fraud upon the part of the defendants would be the use of the name of the plaintiffs, or an infringement thereof with intent to make the impression upon the general public that their associa-

tion and the plaintiffs' association were the same general order," and because there is no evidence of such intent, and no evidence of any impression upon the general public, and no evidence of such impression that the plaintiffs and defendants belong to the same general order.

(14) Because the answer to question eleven is contrary to the evidence. The evidence shows that the defendants organized long prior to 1886, and that they organized in the State of Georgia in 1886, and because the answer to said question is of no foundation value for the judgment to be rendered in this case, and because said answer does not in any way disprove acquiescence on the part of the plaintiffs.

(15) Because the answer to question twelve is contrary to
117 law, contrary to the evidence, and contrary to the charge of the court, given above as to a colorable imitation, and is without any value upon it to form a judgment, and because the said question is a repetition of two former questions upon the same subject.

(16) Because the answer to question thirteen is contrary to law, contrary to the evidence, and contrary to the charge of the court upon that subject, to wit: "fraud upon the part of the defendants would be the use of the name of the plaintiffs or infringement thereof with intent to make the impression upon the general public that their association and the plaintiffs' association were the same general order," and because there is no evidence of said intent, no evidence of the impression upon the general public, no evidence of fraud upon either petitioners, their associates or the general public.

(17) Because the answer to question fourteen is contrary to law, contrary to the evidence and without any value to form a judgment in this case, inasmuch as such use has no effect upon the right of the defendants to their full name as set out in their pleadings and in the evidence, and there is no evidence that said use was ever authorized by the defendants, and that the answer to said questions could have no bearing upon the defendants' right as set out in this case.

(18) Because the answers to questions six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen are all immaterial
118 and covered by the first five questions in this case and so have no weight in forming a judgment herein.

(19) Because the answers of the jury to questions one, two, three, four, eight, nine, ten, twelve and thirteen are contrary to law, contrary to the right of the defendants under the Act of Congress 1870, and under their charter rights granted under said Act of Congress and of the authority conferred thereby.

(20) Because the answer of the jury to questions one, two, three, four, eight, nine, ten, twelve and thirteen are contrary to law; to the Constitution of the United States, and the amendment fourteen (14) thereto and the following clauses thereof: "nor shall any State deprive any person of life, liberty or property without due process of law," and "nor deny to any person within its jurisdiction equal

protection of the laws" inasmuch as all the evidence upon which these answers are founded is illegal evidence and such as applies entirely to the exclusion of the defendants as a colored race from the organization and maintenance of an association not otherwise called in question as contrary to law.

(21) The movants respectfully urge the following grounds of amendment to their motion for a new trial.

119 That the court erred in its charge to the jury, when stating defendants' contentions, in not stating that the defendants claimed their rights under a charter granted by the authority of the Act of Congress dated 5 day of May, 1870, under which the defendants and such like associations were chartered by authority of the act of Congress.

(22) That the court erred in the following charge to the jury: "having thus associated themselves, they would be authorized to use a name by which they would be known; and under certain circumstances they would be protected in the use of that name," in that the use of the words "under certain circumstances" and without defining what circumstances, the jury would be left in doubt, especially in cases like the present, as to the rights of the parties.

(23) Because the court erred in charging as follows: "words or phrases which are arbitrary and fanciful, as applied to an association of persons for legitimate purposes, may constitute a valid trade name" in that the words "valid trade name" are improper and misleading words and do not contain the law as to fraternal associations.

(24) Because the court erred in the following charge: "an association first appropriating, using an arbitrary or fanciful name acquires a proprietary right in the name," in that *name in that* the use of the words "proprietary right" it was erroneously in-

120 timated and the jury might erroneously determine that the property right involved in the questions submitted to them might be only in the bare name without any additional property or property right attached thereto, or exercisable with the same.

(25) Because the court erred in the following charge: "if an association of persons have acquired by appropriation and use, a proprietary right in a name that is arbitrary and fanciful, no other associations of persons would have the right to fraudulently copy or infringe upon that name" in that by the use of the words "proprietary right" the court assumed and the jury were led to believe that any fanciful name regardless of whether it was attended with a legal property right or not would be sufficient for the right of recovery in this case.

(26) Because the court erred in charging as follows: "an infringement upon a trade name would be such a colorable imitation of the name that the general public in the exercise of reasonable care might think that it was the name of the plaintiffs, in that by the use of the words, "trade name" the court applied a wrong standard for adjustments of the rights between fraternal associations, because an injury to a trade or a trade name always implies a property right, whereas as between associations not engaged in trade injury to a property right has to be proved.

121 (27) Because the court erred in charging the jury: "fraud upon the part of the defendants would be a use of the name of the plaintiffs, or an infringement thereof, with the intent to make the impression upon the general public that their association and the plaintiffs' association were the same general Order," in that there can be no fraud unless there is an injury done, and the said impression upon the public can only do injury by depriving the plaintiffs of members, who instead of joining it would join the defendants, or by such impression upon the general public that would draw business, membership or other advantages to the defendants which would be otherwise intended for the plaintiffs, or that the impression upon the general public would damage the plaintiffs because the defendants belong to the negro race. Further, because if the intent to make the impression upon the general public that the defendants' association and the plaintiffs' association were of the same general order, constitutes a fraud upon the plaintiffs without any property right involved and without any other injury, but the mere fact of their identity, then this charge deprives the defendants of the equal protection of the laws, as guaranteed to them by the fourteenth (14) amendment of the Constitution of the United States.

122 (28) Because the court erred in charging the jury: "if the association first appropriating and using a name have a clear right to the use of the name, its subsequent use by another association knowing of this right, would be presumed by the law to be fraudulent," in that, because the name of the defendants is not the same as the name of the Plaintiffs' and there is no evidence of the knowledge by the defendants of any clear right on the part of the plaintiffs to the use of the name, and, in that, this charge ignores the defendants' right to use its name conferred upon it by authority of the Act of Congress; and that such use would be a fraud.

(29) Because the court erred in charging as follows: "an infringement of a trade name would be presumed to be fraudulent if the association first appropriating and using it have a clear right to its use, and the association infringeing upon the name knew of this right," in that the rights under a trade name are not the same as the rights of the parties in this case, and in that the conferring of the defendants' name upon it by authority of the Act of Congress and of the formation of it as a corporation under said Act can not be presumed to be fraudulent.

(30) Because the court erred in the special instruction under the first question in charging: "I have instructed you what an infringement is," in that the court only instructed the jury upon what would be the infringement of a trade name, and not an infringement of the name of a fraternal association.

123 (31) Because the court erred in not charging the jury that the defendants' name was not an infringement, inasmuch as there was no evidence of infringement.

(32) Because the court erred in the special instruction under question two, "the court had instructed you as to when a name will become a property right, and you will look to the evidence and see

whether or not the name of the plaintiffs in this case is as to them a property right," in that the court did not instruct the jury as to when a name shall become a property right, nor did the court instruct the jury as to when names of fraternal associations are so attached to property rights as to give them a property right in the name, and further because the whole instruction under question two misdirected the jury as that question calls for some property outside the name, but connected with the name to make the name valuable, and because the court practically tells the jury that they should answer that question, by the words:

"In using the name," and the whole language of the court as to property right, in the name means nothing more than having a right to its own name and makes this whole question meaningless.

(33) Because the court erred in reiterating its instructions as to fraud in its special instructions under question three.

124 (34) Because the court erred in not charging the jury under question four as to what was meant by the phrase: "does such injure plaintiffs in any property right," and in not explaining that in benevolent associations the test is, as to whether one order would be damaged by depriving it of members who would otherwise join it and whether one order would injure the business, membership or other advantages intended for the other.

(35) The court erred in submitting questions six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen to the jury, the same being covered by previous questions and being immaterial.

(36) Because the court erred in submitting the said six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen questions without charging the jury upon the law and explaining the meaning of each and every one to the jury.

(37) Because the court should have charged the jury as to the conflict of rights in the name between the plaintiffs' and defendants' associations, and not have confused them and made them identical with trade associations. The court should have charged that there must be some property right involved, must not be merely a right to a name, but some property in a name or some property right connected with a name, which would give the name a value;

125 that the right must consist in something else besides reputation and feeling; that the right would not be merely right or wrong in the abstract, but should be a right, the violation of which makes injury and damage.

(38) The court erred in failing to charge the jury, that as to benevolent associations, the test is whether by the use of the name the one corporation would be damaged by depriving it of members who would otherwise join it, and that the name given should not be so similar as to draw business, membership or other advantages intended for the other.

(39) Because the failure of the court to charge the jury that the defendants claim the right to their name under a charter from the District of Columbia by virtue of the Act of Congress, approved 1870, as set — in the 21st ground of this motion, and the answers of the jury to questions one, two, three, four, eight, nine, ten, twelve

and thirteen, as set out in the 19th ground of this motion, and the decree of the court rendered upon said verdict, violate defendants' rights under this charter, and violate Article 4, Section one of the Constitution of the United States, which declares, "Full faith and credit shall be given in each State to the public Acts, records and judicial proceedings of every other State."

126 (40) Because the decree entered up upon the verdict of the jury in this case, is in violation of the law of the United States, to wit: the Act of Congress, approved May 5th, 1870, known as the General Incorporation Act.

BELL, PETTIGREW & BELL,
Att'ys for Movants.

The within and foregoing amendment allowed. Let the same be filed.

Dec. 5th, 1908.

J. T. PENDLETON,
Judge S. C. A. C.

Filed in office the 5th day of Dec., 1908.

W. H. ABBOTT, *D. Clerk.*

Order Overruling Motion for New Trial.

This motion, including the original and amended motion after argument is hereby overruled on each and every ground thereof. Dec. 5, 1908.

J. T. PENDLETON,
Judge S. C. A. C.

127 (*Brief in Evidence.*)

Appearances:

Hon. J. T. Pendleton, Judge Presiding;
Hon. John P. Ross, For the Plaintiff;
Hamilton Douglas, Esq., Bell, Pettigrew & Bell, for the Defendant.

M. M. HILL, sworn in behalf of the Plaintiff, testified:

I live in Atlanta, now, I formerly lived in Augusta. I am a member of the Knights of Pythias, and the order of which I was a member was what they call the Knights of Pythias of the United States and other countries whatever it is, of which Justin Rathbone was the founder. As to when I became a member of the Order, I am not positive, but somewhere between 1873 and 1874, but I am almost certain I was a member in 1874. I was initiated into Number Two Vigilant Lodge, the name of it is Vigilant Number Two, of Augusta, Georgia, and have been a member of it alone continuously am still a member of it. During the term of my membership in the Order, it has usually been called or designated by the name of the Knights of Pythias of the World, is my impression, at one time;

when people speak of it and with reference to it is usually called the Knights of Pythias, and K. P. are the initials that are usually used to designate the Order named. I have been a member of the
128 Grand Lodge Knights of Pythias of Georgia. I became a member of it in 1879. I was eligible previous to that time but I became a member in 1879; I certainly do know that the Grand Lodge of Georgia was organized prior to 1879. I know there is an Endowment Rank, and I am a member of it, and have carried insurance in the Endowment Rank ever since it was first brought into Georgia. I can't say exactly how long ago that was. I think D. R. Woodruff instituted our Lodge in Augusta, it has been more than twenty years, and prior to my being elected an officer to the Grand Lodge in 1879, that's my impression. There is a uniform Branch or Rank in the Order, and I am a member of it, I can not give you the exact date I joined that Rank, it was in the eighties some time. I can't say that I have seen any of the negroes wearing insignia buttons of the Order of Knights of Pythias. I have seen insignia buttons on them, but I can't say that I have ever recognized them, close enough to them to recognize them.

Cross-examination:

I do not hold any office now in the Knights of Pythias; I was in office nine years in the Grand Lodge, that was from 1879 to 1888. The Knights of Pythias get their insignia from the proper authorities, the Supreme Lodge. As to whether they order them and from whom they order them, I can't answer that question positively, but I think most of the insignia, not the uniform and such as that, that
129 comes from the manufacturers, but as far as the jewels are concerned I think they come through the Supreme Lodge to the subordinate Lodges; I think the uniform is made by authority of the Supreme Lodge given to manufacturers—Pettibone, and there is another manufacturer out in Ohio, I think, somewhere. I think there is a gentleman in Atlanta that manufactures them. I don't know where he gets his authority; there used to be people that manufactured these uniforms that the K. P.'s wear, but I don't know whether they do now. You cannot buy them in the stores generally in the neighborhood, just in special stores, is my understanding, I think you can get the jewelry now in any first class jewelry store. There is some insignia used in the lodge room, worn in the lodge room in addition to the jewelry that I spoke of and the uniform; these you can not but in the jewelry stores, you can buy the jewels which has the insignia of the order on them, through the Grand Lodge and officers, but you can buy a pin, an ordinary pin or charm from jewellers. As to the jewelry there is a good deal of variety in the shape, but so far as the colors on it are concerned, they are all the same—there are three colors, red, white and blue, or yellow, white and blue, and are put in different kinds of combinations. You can go to stores generally and explain to them what you want and I believe they can get for you any of these Pythian ornaments and emblems. I have seen them on sale. I have heard of the
130 Knights of Pythias among the colored people, previous to my coming to Atlanta—I came in 1890 and I saw them in par-

ade in Augusta, it was in 1880 I think, I recognized the fact that there was such an organization,—I mean 1888, I saw them in Augusto, it was in a small body and I saw them in Atlanta, on parade, it was no great body; I think a hundred or two is a great body, but twenty-five or thirty is an ordinary body; I never estimated them, never notice sufficiently to do so. The uniform they had on was similar to the Knights of Pythias uniform. I can't say that I have seen any other uniform similar to the Knights of Pythias. I don't know as I could describe to you the Knights of Pythias uniform. I am a little rusty; sometimes it is a blue coat with the cap or the helmet, they have a uniform the same as a military organizaton, a fatigue and a dress, but only one kind of them, I could not explain that to you because I am not an adept; I can't do that unless I see it put before me. I can't describe it. I think the jury have seen as much as you or I in regard to these public uniforms the insignias were pins, I told you, charms—the Masons have them, every secret organization have different charms and have different letters on them, some have Knights of Pythias and F. C. B. on them, that stands for Friendship, Charity and Benevolence, and various other things, they have various other kinds of pins and charms too, they have some made in circles, I think, some made in the shape of a dia-
131 mond, a cross—various ways of making them. I have seen different kinds; I presume there is a variety of these emblems, but not a great variety, I have seen several; as to what I mean by several, there may be as many as eight or ten varieties but I don't know as I ever saw that many; I don't know as I ever did. As to whether that parade I spoke of has injured the white Knights of Pythias in any way, I can't answer that, my opinion is not worth much in that regard and I can't answer that question. We do not allow colored people in the Knights of Pythias, the plaintiff order, at all, there has never been one attempted to get in, not to my knowledge. I don't think there is any danger at all of a colored man getting in. I think every safeguard is placed around it.

E. P. Burns, sworn in behalf of the plaintiff, testified:

Direct examination:

I am a member of the Order of Knights of Pythias, and hold an official position in the lodge, the Capital City Lodge, No. 3, Domain of Georgia, which is located in Atlanta; the office that I hold at present is that of Keeper of Records and Seals, and I have filled the Executive Chair of the lodge; I became a member of the lodge in 1890, or 91, I am not positive which one of these two years, there is no other lodge here of that same name, Capital City Lodge, that I know
of; I don't recollect now that the negroes have a lodge that
132 they call Capital City Lodge; I have not seen any negroes that claimed to be members of the order by special word of mouth. I have seen the sign "K. P. Hall" on windows that I knew were not white lodges, for the reason that I know all the white lodges of the City and knew where their halls were located. There was nothing about these signs to indicate that they were lodges composed of

negroes; there was nothing about the signs to indicate that it was an order carrying the words "North America, South America, Europe, Asia, Africa and Australia," or any other similar, or geographical description, just "K. of P. Hall," something like that. The order to which I belong is designated by the initials "K. of P.," or "K. P.," it is sometimes called, but "K. of P." is K. P. I could not mention any specific cases of negroes wearing buttons or other insignia of the order, but it is my impression I have noted them. I think it is just an impression I have of their wearing a pin "K. of P.," nothing special or different. I know of a letter that miscarried that was addressed to the Chancellor Commander, K. of P. I don't recollect now where it was found. I know some facts came up that are not so clear in my memory at the present, but something came up some time ago about that letter. This letter (referring to a letter handed witness by counsel) was a matter that we had for attention this Spring. When I received the information contained in that letter, as to the party being at the sanitarium, I made an
133 investigation and found him there; it was impossible for me to see him at the time, the hospital authorities stated how they were attending to him, that the man was getting along very nicely and everything in satisfactory condition. Capital City Lodge of Knights of Pythias was instituted on the 19th of October, 1886, by virtue of the authority from the Grand Lodge of Georgia, Grand Lodge of Knights of Pythias, Domain of Ga.

Cross-examination.

As I stated a few moments ago, I became a member of the Knights of Pythias in 1890 or 1891, I am not sure, and have held every office in the subordinate lodges and been two or three times special representative to the Grand Lodge—became a member of the Grand Lodge about twelve or thirteen years ago. As to where that lodge hall is that I spoke of marked "K. P." or "K. of P." I can't recollect, I paid no very special attention to it; it impressed itself on my mind that there was a negro K. P. Lodge, a negro K. P. Hall, that was the impression that I gathered for the reason that I knew where all the white lodges were and they were not there at that place. I recollect nothing else at all on that sign except K. of P., I didn't examine it carefully; it just impressed itself on my mind that there was a sign "K. of P."; I believe I was on the street across from it, as to whether I could have seen them from across the street, if there had been any similar letters on the sign, my eye-sight is pretty good, if
134 there was a letter upon it an inch high I could read it very clearly. I gathered there was a K. P. organization of colored people. I have seen them on parade on the streets; it never was a matter that called my special attention to it, it was a matter that came on casually in my experience, just along in life, and I could not tell you how long ago it was when I first saw them parading on the streets, it has been some time ago; I could not tell you definitely whether it has been fifteen years ago; it is one of those impressions that a man has but the definite fact is not fixed in his mind, my impression is it would be several years ago, possibly ten years ago, and

might be more than ten. I don't recollect seeing them anywhere else except here; I could not tell you whether it was a large crowd or a small one, it was just an impression of the fact of seeing them. I had no interest in it, just a thing that came along, this was after I became a K. P. myself, and after I became an officer, because I became an officer right away, pretty soon, very shortly after my membership. As to whether there is any injury to the business interests of the Knights of Pythias on account of the existence of this other organization, if you mean by "business interests" any increase or decrease, or any effect on the money that they could get in, no I don't know that it affects the business interests at all. The negro Knights of Pythias, under my personal observation can, and does do
135 the white Knights of Pythias this injury, that a letter impersonally addressed to a K. of P. lodge could go astray and lead to suffering on the part of any in distress, whereas a prompt and correct delivery of that letter to any white lodge would get help; I think you have an illustration of that here, that might have caused trouble; this letter that I referred to is the only specific case of an instance of that kind that I know of. To my personal knowledge I don't recollect any other, that is the only one I know of from my own personal experience for the last ten years, but during that time I have not been in the office I am now, the position I hold now would make it a matter of more direct attention on my part, the other offices I held would not cause it to come under my observation so closely.

R. M. Eubanks, sworn on behalf of the plaintiff testified.

Direct examination:

I am a member of the Grand Lodge Knights of Pythias of Georgia, the plaintiff in this case, and have been about six or seven years; I have been a member of the subordinate lodge of the order between ten and twelve years. I first joined Gate City Lodge No. 71, and subsequently became a member of Uniform Lodge 23, of this city; I am a member of the uniform rank and have been probably almost as long as I have been a member of the order; I am familiar
136 with the uniform and flags and other insignia used by the uniform rank. I know of organizations of negroes calling themselves uniform rank Knights of Pythias. There must be such organizations in Fulton County and State of Georgia. I have seen parades of them on the streets in this City; I saw their uniform and flag, in noticing their uniform and flags and colors it in every respect was identical with the order of which I am a member, the Knights of Pythias; save the color of the people who were wearing them; there was nothing to indicate that it was a separate order in any way that I could designate at all. Members of the defendant's order of Knights of Pythias have quite a number of times tried to make themselves known to me, claiming fraternal relations with me. I have seen negroes wearing insignia buttons or charms of the order. Their insignia on their lapel buttons or charms or rings, whatever it was, was identically the same as ours, nothing to designate as a different

order at all; as to whether there was anything to designate it as having a name, having some word such as Europe, Asia, Africa, the only thing I have ever seen on their lapel button or rings was "F. C. B." or "K. of P," that is the extent of the initials that is always on their buttons or other jewelry. Negroes outside of Atlanta and Fulton County have claimed friendly relations with me, in my different travels over the State in meeting with the Grand Lodge and other Pythian bodies, it was quite often. I have in fact
137 run across waiters in hotels and restaurants and other places like that who have tried to make themselves known to me in the ideas of Pythianism. My recollection is that I have seen signs of negro lodge halls, it is my recollection that causes me to say that I have seen their lodge rooms on the corner of Peachtree and this street that runs there, Auburn Avenue, the third floor there, the building used to be a K. of P. Hall, occupied by negroes, and on this window was the great large letters "K. of P." there was nothing to indicate that it was a negro organization, nothing whatever, in fact. In my earlier membership with the order, I was hunting the K. of P. Hall and was directed to that place, but I found my mistake and left; the use of the name to my mind does cause social and other friction or antipathy. I have been bantered quite a number of times—I have had the banter thrown at me quite a number of times, of the parades of my colored brethren, and of course in a joking way, probably wanton way, probably wanted to know why I wasn't in the parade and things of that kind, which is a great source of humiliation to me; I am an officer of the uniform rank. Those remarks that I have just referred to would always be made by citizens who were not members of the Knights of Pythias.

Cross-examination:

I went up as close as man gets to man in noticing these buttons and insignia that I was talking about a while ago. I did not
138 go up to them for that purpose, I got about that close to them (indicating about two feet) but not for that purpose; I have seen quite a number of them; they don't wear a lapel button when on parade. I was speaking of the button that they wear on their citizen's clothes when I say lapel button or ring or charm, but every negro, if you are speaking of that, as far as I could see, standing on the sidewalk and viewing the parade in the street, which would not over fifteen or twenty feet, in every particular it was uniform used by my organization, was identical in every particular. I have noticed it every time; I didn't examine it with a view of carrying it in my memory, but I noticed the similarity and the exactness of their uniform and insignia, flags and colors; I stopped until the parade passed; these buttons that I spoke of that they wore on their coats, it was citizens' clothes, I didn't take those off and examine them, I saw on them "F. C. B." and the colors of the Order which are blue, yellow, and red, and these three letters and the colors of the Order were on there; they were exactly like the one we used, they vary as to shape and design, but the general character is the same, the letters, initials and colors. These buttons are made by the wholesale jewelers and sold to the market, in the open market; I presume you or I, or any-

body can buy them; the uniforms are made for Pythians generally; Pythian jewelry is found generally in jewellers' shops, and has become to be a general name of that kind, Pythian jewelry.

139 Those instances that I spoke of just now, of people mentioning to me those little remarks about going in the parades were not always friends of, people that knew me, knew my position in the Uniform Rank, and probably slightly acquainted with me, and some times friends. There has always been so many that took me up that way I don't know as I can absolutely recollect the special times or the men's names. I don't know as I could give you the names, you would hardly jot down the names for future reference at all, it was just a passing remark or cut, as I might term it; as to whether it was done in an insulting way or a pleasantry or joke, if it had been in an insulting way I might have followed it up a little further; I suppose it was more of a banter than anything else; I have felt like resenting these remarks at times but I never did; they were said mostly by people that I was slightly acquainted with, and I hope that they meant it as a kind of pleasantry and joking, I didn't take it so, not entirely, I didn't like it, it didn't set well. I have known of the existence of this negro Order of Knight- of Pythias about as long as I have been a member of the Order, I suppose about ten years, that's the best of my recollection and belief. I have heard of parades all over the State, different parades, and I have had people to tell me of seeing my brothers parading in different places, that has been I should think off and on for the last ten years. The hall

140 I spoke of a while ago is the only one that I did know of their having; it seems to me, to the best of my recollection I saw that probably six or seven years ago, something like that, it has been some time, I may be mistaken as to the number of years. As to where there is any injury to the business of the Order of the Grand Lodge Knights of Pythias caused by the existence of this other Order of negro Knights of Pythias, the Grand Lodge of Georgia don't do business, they are not in a commercial business; I should think it would do them harm in the way of cutting off income from the fact, simply in the way of getting new members, that a man that is not vitally interested in the fundamental principles of the order might refuse to join an Order that has such an imitator in the mid-t, and seek to join another Order; I can't say that I have known of a case of that kind, never have known a man to refuse to join on that account; I would describe the injury that this does to the Grand Lodge or the Supreme Lodge of Knights of Pythias, the injury that the existence of this negro Order does to the other, in this way, that it throws somewhat of a reflection upon the Order by allowing its name or being used in an imitation of the real principles of Pythianism by colored people; I am speaking of the insignia, colors, jewelry, uniform, flags, and other outward features of the Order, of course their principles is a different proposition; I can not tell the jury any injury that would accrue to them on account of their having

141 the same principles of love, friendship and charity; the injury that this negro organization would be to the other on account of the similarity of emblems, signs and uniforms. I should think it would depreciate a great deal from the prestige of the Order of

Knights of Pythias; I think I have heard somebody else say that it would besides myself, the conversation was so general as to that until it prevents me from designating any special person, but if the Grand Lodge of Georgia Knights of Pythias was to meet in Savannah, say in May, and in April it was preceded by a convention of colored people it would naturally be supposed that the white delegation would not be received with so much enthusiasm as it would in the absence of the colored delegation. I do not mean to say that a part of the enthusiasm that would be received would be first expended on the colored men, but the great part of the influence that would be given out by the white people—it would throw a damper on their convention simply because of the fact that it was preceded by the negro organization, it would throw a damper on it by having a colored organization with the name and insignias and colors, I think that is a general opinion, it is my opinion. I have heard quite a number of people, I think, in conversation, I mean in traveling throughout the State, claim that it detracts from the influence of the white Pythians,
it is from the fact I presume that it is an imitation of the
142 genuine Order of Knights of Pythias, I should think it is
because one is white and the other black, another reason, that they are not recognized and under the control of the Supreme Lodge of Knights of Pythias. I have quite a number of times been approached by waiters that had buttons on them who would make, in approaching me, the claim that we were virtually—not absolutely say so much, but imply that we were brothers and should be in the same cause, that we were engaged in the same cause of Pythianism, and try to make themselves exceedingly friendly on that ground. I was once approached in Brunswick, in Atlanta, and in several places. I could not give you the names of the negroes, they were waiters in the hotels and restaurants. They would make the claim, in other words, they would state whatever we did we were just all K. of P.'s, and were entitled to our friendship and our consideration and our affection; they did not use just those words; as to whether it is true I am entitled, as man to man, to their friendship. I have nothing in the world against any negro; and they claimed they were entitled to my good will—you say friendship; I have nothing against anyone; I suppose you might term it that if you choose, and they got at the idea of affiliations, they did not use the word affiliation, but that we were brothers—they used the word brothers, said we were brother K. of P.'s;" I suppose on account of that they must have
meant that they wanted a liberal tip, I suppose; I think it
143 was a presumption on my privacy as a gentleman; they tried
to enter into some of the secrets, wanted to know about this or that or the other, and I have never answered them on any of the points that they wanted to know, when they approached me for this information I promptly shut them up; that was not the end of it, it was a continuous annoyance.

Redirect examination:

These different negroes that accosted me claimed to know the secret signs and pass words and so on of the Order to which I belonged, claimed to be of that same Order; the uninitiated white

people and negroes have no way of knowing that the negro members and our members are not members of the same Order, that I know of, these different parties that spoke to me gave me the impression that they seek to create the impression that it is part and parcel of and recognized by our Order. These different parties that accosted me claimed to be of the same fraternity with us, Knights of Pythias, as to whether they made any designation that theirs was the colored Knights of Pythias and ours the white, or any other designation of that sort, they refer to it as the Knights of Pythias, one great Order; people who are not members of the colored Knights of Pythias and not members of the white Knights of Pythias can not tell from anything in the conduct of these negroes that their order is not recognized by ours as part of our Order.

144 Recross-examination:

The way I knew that these people that I spoke about were members of the negro Knights of Pythias was, they asked me questions that would lead me to believe that they were Knights of Pythias; they used the expression that "we are Knights of Pythias" and "K of P's" as to whether they said anything like "your Order and my Order being the same," they did not say it wasn't and they didn't say it was.

G. W. WRIGHT, sworn in behalf of the plaintiff, testified:

Direct examination:

I am a member of the Knights of Pythias. I belong to the negro race; I was not initiated into the Order by any white lodge; I am a member of Capital City Lodge, K. of P. located in Atlanta, Georgia. I have heard there was another Knights of Pythias lodge here of that same name. I don't know it; I have heard there was a white lodge here named Capital City Lodge, but I am not familiar with it, to know it. I don't know. I have been a member of the lodge about three years, and hold the office of Chancellor Commander; I learn that the white Order has a lodge by the name of Capital City, but I don't know that they have. I can read; I see my name written there in pencil on that letter and envelope which you hand me, it was on there when it was delivered to me; that letter was delivered to me by the postman I guess, it was in my place
145 of business when I came in along with three or four other letters; I kept it about three hours. The first thing I done when I got this letter I tried to look as to whether there was a white lodge or not; the first thing I did was not to go to the hospital to see about the man, before I did that I went and got a City Directory and saw if I could locate as to whether there was a white lodge or not, and failed to do so, could not locate whether there was a white lodge of Knights of Pythias in the City. I do not definitely know any white men in Fulton County that are Knights of Pythias. I know of them but I don't definitely know them; none of my white friends as I know of, are members of the Knights of Pythias; I did ask white people whether there was a Capital City Lodge of

Knights of Pythias. When I got that letter, after I could not locate whether there was a white lodge of that name, I got a telephone book to locate the sanitorium, and I found there was one on Luckie street, on my rounds seeing the sign, I gone in there and gone in the sanitorium and asked for that man, and the nurse told me his room was upstairs and that she would take me to it, I asked to see the man, after I seen him I told him I had some way come in possession of a letter coming from him, he referred me to the manager of the Royal Insurance Company in the Empire Building, a Mr. Dargan I think it is, and I gone over there to the Empire Building; I wrote that name, Milton Dargan, on the envelope, and
146 it seems like that an old envelope he had in his room, the sick man did, and I taken it to him, and after I carried it over there he said he wasn't a member of the lodge at all, didn't think it meant him, I said well, I was referred to him by the address of that envelope, and there was another gentleman came up and said he was a member of the Order and he would take charge of the letter and see to its getting to its proper place. I told him all right, if not he would send it back to me, and I said its none of my property, and if you fail to find the proper man send it back to the sanitorium, and he said he would do so, and I knowed no more of the letter nor heard no more until I was subpenaed here Saturday. I went to the hospital between two and a half hours and three hours after I got the letter; I went in there but I didn't particularly introduce myself to him as Chancellor Commander of Capital City Lodge, I told him I became in possession of some mail, I didn't claim to be his brother fraternal order man, one of his fraternity; I opened the letter when I received it. The Capital City Lodge, to which I belong, was organized here, been about four years ago.

HAMILTON DOUGLAS, sworn in behalf of the plaintiff, testified:

Direct examination:

I am a member of the Supreme Lodge Knights of Pythias, the plaintiff in this case; there are in other parts of the State members of that Lodge, as regards their names and residences, as far
147 as I think, there is Mr. Summercamp at Columbus, Ga., and Mr. Brannen at Talbotton, and Mr. Carling at Macon. I am the only one living in Atlanta here that I know of. I joined the Knights of Pythias in 1887, and I became a member of the Supreme Lodge Knights of Pythias twelve years ago this August, by your leave, I have travelled into every town of over a thousand people in Georgia, and all over the United States, in view of my official connection with the order through the past twelve years, I have had a good deal of experience with negroes claiming to be members of the order of Knights of Pythias; I usually in travelling around being in an official capacity, always wear what I call a K. P. button, one of the buttons emblematic of our order, and I have been very frequently approached by negroes on the train such as porters and in hotels throughout the towns in Georgia particularly; they came up and gave me indications of membership in the order and were

claiming recognition from me. I always ignored those sort of things. In the City of Americus several years ago there were three negro men waiters in the hotel came around me at the hotel. They were waiting on the table, and I didn't know just what the matter was at first, but through their K. P. buttons, and they were making themselves known as K. P.'s, or trying to, and I sent for the proprietor of the hotel to take them away; they certainly claimed to be a part of the order that was part and parcel of our order. I
have noticed the buttons that they wear and the uniform
148 and flags of their uniform rank, and I don't think it is contended for a moment that there is anything different in their uniform or their flag, either in colors or the print that is on it, or in their lapel buttons to indicate that there is an order different from the plaintiff in this case. I never saw it if there was; the buttons that they wear on their coat is the same as I wear; the uniform and I saw them wear parading in Atlanta last year was the same as our uniform, just the same as ours. There is nothing that I have seen in their insignia, uniforms and flags and initial and color and arrangement of their lapel buttons and other insignia that would inform those not initiated into their order that they were not members of our order, and by reason of my connection with our order I have looked very closely, the fact is, as I understand, they claim to be part of our order. The reason I say they claim to be part of our order, I had a conversation on Saturday with Dr. Butler of our city and he made that claim, said they came from the same fountain head that we did; Dr. Butler is a negro and holds with the colored people the same position that I hold in our order, that is, Supreme Representative; he said that last Saturday afternoon, I don't think that is in controversy. For some years in Atlanta this little sign stood out there on this continuation of
Auburn Avenue, right near Peachtree street. They were in
149 the third story, I think it was, and a sign a transparancy, one of these things made of glass and designed to have a light go on the inside so as to illuminate the letters on the outside, and that had on the outside "K. of P. Hall." As to the friction or ridicule or complaint that is caused by the negroes having the same name, there is this natural antipathy of two races, one to the other, and I resent very much belonging to an order that specifies that its membership is confined to white people. I resent very much having friends and people of whom I know a great many around the City of Atlanta, and in other places, get after me and joke me about my colored brethern, I resent it very much; I resented it in New Orleans two years ago; these people that make that kind of reference are not members of the Knights of Pythias, of course a member of the order wouldn't do it.

Cross-examination:

I never heard any member of our order do it. As to the claim Dr. Butler made in words, what he said, it is very hard to quote a man what he said, but the claim that I understood him to make, that it was of the same parentage, that was the idea of it, he went

on to say that he didn't know how they got their initiation into the mysteries of the order, something of that kind; I said I
150 knew what was in their printed literature. He didn't make a claim to belong to the Georgia Lodge that I belonged to,—belonged to the Knights of Pythias, though I say that Dr. Butler claimed that this order of his was part of our order. I think that claim was simply and solely that they were both descended from Rathbone, the order that he founded; he didn't claim to be organized under the white lodges or the Supreme Lodge Knights of Pythias; as to whether I have ever known one of the members of the negro Knights of Pythias claimed to be a member of the white Knights, I don't know what he was claiming, he was claiming to be a member of this order that I belong to, that is my objection; I never took the trouble to sift such a claim down. He certainly did claim to be a member of the White order, in giving me the sign; as to whether he made any claim in words, I never had any words with him; they didn't have to make any words, frequently those claims were made in signs, in imitation of some secret signs of the order and some in words, words of a secret character, which indicated that they were claiming to join and belong to the same order that I did. They have used some of the signs we did in the white order, or ones that closely imitated them. These signs are prescribed in the first instance by the Supreme Lodge Knights of Pythias, to which I belong, they extend no further back than the Supreme Lodge of Knights of Pythias, they are changed, Mr. Petti-
151 grew, year after year, sometimes changed; I don't know that some of them go back to the first origin of the order, excepting that the Supreme Lodge, its authority is final on all the matters concerning ritual and all the matters concerning these things that I am talking about. I can't tell you how long I have known of the existence of the negro order of Knights of Pythias, I don't know; I know that for five or six years I met people in this way, you know, who were evidently claiming to be Knights of Pythias, I think I have known as far back as ten years, of the existence of this order, it is perhaps that long that I have seen these people making such signs to me; it is pretty hard for me to say that I have known it as far back as fifteen years, maybe I have, I really can't say. I have travelled all over the United States in the interest of my order, and I have seen negroes claiming to be K. P.'s from California to Georgia, porters *on* the Pullman Car service.

152 *Documentary Evidence Introduced by Plaintiff.*

Certified copy of certificate of incorporation from the office of the Recorder of Deeds, District of Columbia, filed August 5, 1870 (the copy of signatures and seals and affidavits of incorporators, and certificate of Recorder of Deeds being herein omitted) as follows:

Supreme Lodge K. of P.'s Association, D. C., Recorded August 5, 1870, 12 M.

Certificate of Association of the Supreme Lodge Knights of Pythias.

Whereas it is deemed advisable to have the Supreme Lodge of Knights of Pythias an Incorporate Body under the laws of the Congress of the United States for the more perfect working of the beneficent intentions of the said Order.

And whereas with a view to promote this object, and as Grand & Subordinate Lodges of the said Order have been formed or organized in various States & Territories, and will be hereafter formed in various other States & Territories of the United States, as well as foreign countries.

1. Now therefore, be it known, That in accordance with the Act of Congress entitled "An Act to provide for the creation of corporations in the District of Columbia by general law" approved May 5, 1870, the undersigned having associated themselves for the purpose and with the design of establishing and creating the Cor-
153 poration to be known and named the Supreme Lodge Knights of Pythias, do hereby make and authorize to be filed in the office of the Register of Deeds, in the District of Columbia, this certificate and these articles of association for the government of themselves, their associates, assigns and successors.

2. And be it further known that the beneficial Association of which this is the certificate, shall be known as the Supreme Lodge of the Knights of Pythias, the seal of which has been copyrighted by the Supreme Recording and Corresponding Scribe in the Clerk's office of the Supreme Court of the District of Columbia.

3. And be it further known, That Jos. T. K. Plant, Past Supreme Chancellor, Clarence M. Barton, of the District of Columbia, Venerable Supreme Patriarch, Wilbur H. Myers, of Penna, Supreme Chancellor, Saml. Read, of New Jersey, Supreme Vice Chancellor, C. L. Russell of Ohio, Supreme Banker, W. A. Porter of Pa., Supreme Guide, Jno. F. Comstock, of Conn., Supreme Junior Steward, H. Clay Lloyd of Kentucky, Supreme Outer Steward, Geo. H. Crager of Nebraska, Past Supreme Chancellor, Edward Dunn, Past Grand Chancellors, Harry Kronheimer, J. R. N. Curtin, Francis Woods, Hugh C. Divine, Jos. S. Martin of the District of Columbia, together with all past Grand Chancellors of each and every State, Territory or Jurisdiction now organized, or hereafter to be organized, under the authority of this Supreme Lodge, shall constitute from and after the filing of this certificate as aforesaid, "The Supreme Lodge
154 of Knights of Pythias of the World."

4. And be it further known that the Board of Trustees of the said Supreme Lodge Knights of Pythias (who shall be elected annually) shall consist of Joseph T. K. Plant, Clarence M. Barton, Edward Dunn, Jos. S. Martin, Francis Wood, Harry Kronheimer, and Hugh Divine, who shall serve until the election of their suc-

cessors at the annual Session of the Supreme Lodge in April, 1871, and shall serve without pay.

5. And be it further known, That no contract for the disbursement of the monies of the said Supreme Lodge, shall be valid and of effect until ratified by the Board of Finance or financial Committee.

6. And be it further known, that the officers of the said Supreme Lodge Knights of Pythias of the world shall consist of Venerable Supreme Patriarch, Supreme Chancellor, Supreme Vice Chancellor, Supreme Recording and Corresponding Scribe, Supreme Banker, Supreme Guide, Supreme Junior Steward, Supreme Outer Steward, all of whom shall be elected by ballot, every alternate year on the first day of the session of said Supreme Lodge "and the said Supreme Recording and Corresponding Scribe and Supreme Banker shall give such security for the faithful performance of their
155 duty as may be ordered by said Supreme Lodge.

7. Be it further known, that the said Supreme Lodge shall hold an annual session for the transaction of all business for the benefit and welfare of the order, and that the Supreme Chancellor may and on the call of fifteen past Grand Chancellors or past Supreme Chancellors, convene the Supreme Lodge at any time business may demand, and all of said annual sessions shall be held in such city or town as the Supreme Lodge may determine upon at a regular session, provided all special or called Sessions shall be held in the City of Washington, D. C.

9. And be it further known that the said Supreme Lodge shall have power to alter and amend its Constitution and By Laws at will, and that it shall have power to prescribe modes of initiation &c., for the working of said Order, and no Grand or Subordinate Lodges purporting to be Knights of Pythias shall have legal standing unless chartered by or through the regularly elected officers of this Supreme Lodge in regular or called Sessions, or by the Supreme Chancellor, during the recess of said Supreme Lodge. In witness whereof we the undersigned officers and members of the Supreme Lodge of Knights of Pythias of the World have hereunto affixed our names and seals this .... day of August, A. D., 1870.

156 Certified copy of amendment to certificate of incorporation from the office of the Recorder of Deeds, District of Columbia, filed January 7th, 1876 (the copy signatures and seals and affidavits of incorporators and certificate of Recorder of Deeds being herein omitted), as follows:

Amended Act of Incorporation of the Supreme Lodge Knights of Pythias, Recorded January 7th, 1876.

Whereas on the 5th day of August, A. D., 1870, it was deemed necessary to incorporate the Supreme Lodge Knights of Pythias of the World under the Act of Congress, approved May 5th, A. D., 1870, entitled "an Act to provide for the creation of Corporations in the District of Columbia by General Law," and whereas the Body Corporate thereby created has powers conferred on them by said

law to make proper laws to govern themselves and to alter and amend their act or deed of Incorporation. It is therefore in view of the said law that the following amendments to said deed of Incorporations are acknowledged by the proper officers and members and placed on file in said District, and it is hereby agreed and understood that everything in these articles different to those in the old articles shall be the Act of Incorporation jointly, with so much of the old Act as may not be altered by these articles, and which said
157 articles of Incorporation are hereby amended and altered as follows:

1st. To section two, add the words "and has also been recorded in the office of the Librarian of Congress in the Capitol of the United States at Washington, D. C.

2nd. That all of section three (3) in the paper filed August 5, 1870, is hereby declared void and the following is inserted in lieu thereof, "The Supreme Lodge shall consist of" all past Supreme Chancellors, the Supreme Officers and Two Supreme Representatives from each Grand Lodge under the jurisdiction of said Supreme Lodge until there are 20,000 members belonging to one Grand Lodge, and one Supreme Representative for each additional 10,000 members, provided that no Grand Lodge shall be entitled to more than four (4) Supreme Representatives.—3.

Third. That section four (4) be altered to read as follows: The Board of Trustees shall consist of Supreme Chancellor S. S. Davis of N. Hampshire, S. R. of R. & S. Joseph Dowdell, of Ohio, S. M. of E., Jno. B. Stumph of Indiana, and Supreme Vice Chancellor D. B. Woodruff of Georgia, who shall serve until the election of their successors. "It being understood that the four principal officers of the Supreme Lodge shall compose the Board of Trustees."

Fourth. That all of section (5) five is hereby annulled.

Fifth. That section (6) six shall hereafter be section five (5) except the words "on the first day of the Session of said Supreme Lodge."

158 Sixth. That section (7) seven shall hereafter be section (6) six, and shall read and be as follows: "That the said Supreme Lodge shall hold an annual Session at such time and place as a majority of its members present may determine for the transaction of all business for the benefit and welfare of the Order, and that the Supreme Chancellor may, and on the call of the Supreme Representative- of Ten Grand Jurisdictions in writing shall convene an extra Session of said Supreme Lodge at Washington City, D. C.

Seventh. And further all succeeding sections are hereby altered in number to correspond as above and the names of all Supreme officers are hereby made to agree with the Constitution of the Order, and it is hereby declared that all and singular the parts of the Incorporation of August 5, 1870, not altered by this sup-lemental paper are hereby ratified and reaffirmed, and that said Supreme Lodge shall be and remain a body Corporate for the term of twenty years. And for the purpose of a compliance with the Act of Congress heretofore cited, We, S. S. Davis of N. H., Jos. Dowdell of Ohio, Jno. B. Stumph of Indiana, and D. B. Woodruff of Georgia, officers

and trustees of said Supreme Lodge, Past Supreme Chancellor, Jos. T. K. Plant of the District of Columbia, Past Supreme Chancellor Saml. Read of New Jersey, and Past Grand Chancellor Frederick D. Stewart, C. J. Foxwell, Richard Hoodhead, A. T. Cavis, and
159 A. J. Cunning, all of the District of Columbia, as incorporators, have hereunto affixed their hands and seals this fifth day of October, A. D., 1875.

Certified copy of amendment to certificate of Incorporation from the office of the Recorder of Deeds, District of Columbia, filed May 24th, 1882, (copy signatures and seals and affidavits of Incorporators and certificate of Recorder of Deeds being herein omitted) as follows:

Certificate of Incorporation of the Supreme Lodge Knights of Pythias, Recorded May 24th, 1882, 12.30 P. M., "Amended Act."

Whereas, by virtue of the provisions of the Act of Congress, approved May 5, A. D. 1870, "entitled an Act to provide for the creation of corporations in the District of Columbia by general law" the Supreme Lodge Knights of Pythias of the World was duly incorporated on the 5th day of August A. D., 1870, by compliance with the terms of the said Act of Congress, and the certificate of Incorporation was on the said 5th day of August A. D., 1870 duly filed and recorded among the deeds of Incorporation folio 75, in the office of the Recorder of Deeds in the District of Columbia, and whereas in pursuance of power and authority in said corporation lodge afterwards on the fifth day of October A. D., 1875, certain articles of the said Act of Incorporation were amended and the unchanged articles ratified and confirmed, and proper articles
160 of amendment duly executed in conformity with the requirements of the law aforesaid and recorded or filed for record in the office of the Recorder of Deeds aforesaid on the said fifth day of October, 1875. And whereas it is deemed expedient that the following additional amendments to the said Deeds of Incorporation should be made, and to that end the same are now executed and acknowledged by the proper officers and members, and placed on file for record, and it is hereby agreed and understood that every clause and provision in these articles as amended, in conflict with the original or amended act of Incorporation shall be the Act of Incorporation jointly with every clause in the oldest or amended act not altered by these articles.

Now, therefore, the articles of Incorporation are hereby amended and altered as follows: viz: 6—section 6—is hereby amended and shall read and be as follows, viz: That the sessions of the Supreme Lodge shall be held at such times and in such places as the Supreme Lodge may in accordance with the Constitution and Laws determine for the transaction of all business for the benefit and welfare of the order, and the Supreme Chancellor shall convene extra sessions

of the Supreme Lodge in the manner prescribed in the Constitution of the said Supreme Lodge.

That the following additional section to be known as sec-
161 tion 9 be added to the act of Incorporation as amended, viz:

9. That the said Supreme Lodge shall have power to establish the uniform rank and the endowment rank upon such terms and conditions, and governed by such rules and regulations as to the said Supreme Lodge may seem proper.

And it is hereby declared that all and singular the parts of the Act of Incorporation of August 5, 1870, not altered by the supplementary paper of the 5th of October A. D., 1870, and all the parts of the said last mentioned paper so far as neither of the said original or supplementary acts is changed by this paper, are hereby ratified and re-affirmed, and the said Supreme Lodge shall be and remain a body corporate for the term of twenty years.

And for the purpose of a compliance with the terms of the Act of Congress heretofore cited, we, George W. Lindsay of Maryland, Joseph Dowdell of Ohio, Jno. B. Stumph of Indiana, and Jno. P. Linton of Pennsylvania, officers and trustees of the said Supreme Lodge, Past Supreme Chancellor D. B. Woodruff, of Georgia, Past Supreme Chancellor Saml. Read, of New Jersey, Past Supreme Chancellor Justus H. Rathbone, of the District of Columbia, Past Grand Chancellor G. J. L. Foxwell, A. J. Gunning, Jno. W. Thompson, Jos. T. Coldwell, all of the District of Columbia, as incorporators, have hereunto affixed their hands and seals this seventh day
162 of March A. D., 1882.

The following extracts from a Digest of the Laws of the Supreme Lodge Knights of Pythias, and a Digest of the principles of Pythian common law, as established by the various Grand Lodges published in 1885, and from the Journals of the proceedings of the Supreme Lodge, to wit:

Supreme Lodge, plan upon which organized: The convention called together by the Grand Lodge of the District of Columbia to devise a plan for organization of the Supreme Lodge submitted the following: The Supreme Lodge shall be composed of Past Grand Chancellors and three representatives from each Grand Lodge, their election as such, making them Past Grand Chancellors. They shall be elected for two years, at the same meeting at which the deliberations of this convention are ratified. They shall meet in the Supreme Lodge in the City of Washington, District of Columbia, upon the second Tuesday in August, in 1868, and proceed to organize by electing a founder and Supreme Past Chancellor, Supreme Venerable Patriarch, Supreme Chancellor, Supreme Vice Chancellor, Supreme Recording and Corresponding Scribe, Supreme Banker, Supreme Guide, Supreme Inner Steward, Supreme Outer Steward. The said body, after organizing as above, shall be hailed and known and recognized as the Supreme authority of the Knights of Pythias of the World.

All the present officers of the State Grand Lodges are declared Past Grand Chancellors.

Respectfully submitted,

WILLIAM BLANCBOIS,
President of the Convention.

Attest:
CLARENCE M. BARTON, *Secty.*"

The above appearing in proceedings of Convention Supreme Lodge Journal 1868, page 10. The above plan was ratified by the Grand Lodges of the District of Columbia, Pennsylvania, New Jersey, Maryland and Delaware, all of the Grand Lodges then in existence. The delegates met on the day named and perfected the organization of the Supreme Lodge. Journal, 1868, 11.

Resolved, that the Supreme Lodge approve the copyrighting of the Supreme Lodge seal and the incorporation of the Supreme Lodge. Supreme Lodge Journal, 1871, page 382.

Supreme Lodge Journal 1875, pages 1017, 1123, Journal of 1876, pages 1201, 1293, Journal of 1880, page 2071 and Journal of 1882, page 2273, showing as follows: The articles of incorporation were amended at the session of 1875. An amended act was also approved and ordered filed for record at the session of 1876, and in order to meet the requirements of the change to biennial sessions, the articles were finally amended at the session of the Supreme Lodge
164 of 1882.

An act of Congress to incorporate the Supreme Lodge Knights of Pythias, approved June 29, 1894, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That George B. Shaw, of the City of Eau Claire, State of Wisconsin, Wm. W. Blackwell, of the City of Henderson, State of Kentucky, Walter B. Richie, of the City of Lima, State of Ohio; Robert L. C. White, of the City of Nashville, State of Tennessee; Philip T. Colgrove, of the City of Hastings, State of Michigan, and Tracy B. Bangs, of the City of Grand Forks, State of North Dakota, officers and members of the Supreme Lodge Knights of Pythias, and their successors, be and they are hereby incorporated and made a body politic and corporate in the District of Columbia, by the name of "The Supreme Lodge Knights of Pythias," and by that name it may sue and be sued, plead and be impleaded, in any court of law or equity, and may have and use a common seal, and change the same at pleasure, and be entitled to use and exercise all the powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia.

Sec. 2. That the said corporation shall have the power to take and hold real and personal estate, not exceeding in value one hundred thousand dollars, which shall not be divided among the mem-
165 bers of the corporation, but shall descend to their successors for the promotion of the fraternal and benevolent purposes of said corporation.

Sec. 3. That all claims, accounts, debts, things in action or other

Par. b. The military branch, to be known as the Uniform Rank.

Section 3. No change shall be made in the structure of the order, as above established, except by amendment of this constitution.

Article IV. The Ranks of the Order.

Section 1. The ranks of the order shall be the following, and no others:

Par. a. The ranks of knighthood, know as Page, Esquire and Knight, as established in the ritual of the order for subordinate lodges.

Par. b. The Endowment Rank, which shall be attained only in accordance with the laws enacted for its government.

Par. c. The Uniform Rank, which shall be attained only in accordance with the laws enacted for its government.

Par. d. The Grand Lodge Rank, which shall be attained
170 only by a past chancellor in good standing, and in such manner as the Supreme Lodge may by law provide.

Par. e. The Supreme Lodge Rank, which shall be attained only by a past grand chancellor in good standing, and in such manner as the Supreme Lodge may by law provide.

Article V. The Honors of the Order.

Section —. The honors of the order shall be the following, and no others.

Par. a. Past Supreme Chancellor, which shall be attained, upon the installation of his successor, by every Supreme Chancellor who shall have served to the end of his official term.

Par. b. Past Supreme Representative, which shall be attained by every past grand chancellor who shall have served as Supreme Representative during at least one convention of the Supreme Lodge.

Par. c. Past grand chancellor, which shall be attained upon the installation of his successor, by every grand chancellor who shall have served to the end of his official term; and, at the institution of a new grand lodge, by the two members thereof who shall have been elected Supreme Representatives.

Par. d. Past grand representatives, which shall be attained by every past chancellor who shall have served as grand representative during at least one convention of a grand lodge.

Par. e. Past chancellor, which shall be attained, upon the
171 installation of his successor, by every chancellor commander who shall have served to the end of his official term; and, at the institution of a new subordinate lodge, by the four members thereof who shall have been chosen by the lodge to receive that honor.

Article VI. The Supreme Government.

Section 1. The Supreme Government shall consist of three independent, coordinate departments, viz., a legislative department, an executive department, and a judicial department.

Article VII. The Legislative Department.

Section —. The legislative powers of the Supreme Government shall be vested in a Supreme Lodge, which shall be composed of:

Par. a. All past supreme chancellors in good standing in their respective grand and subordinate lodges.

Par. b. Its officers, as designated in this constitution.

Par. c. The supreme representatives legally elected or appointed.

Section 2. The officers of the Supreme Lodge shall be, the Supreme Chancellor, The Supreme Vice Chancellor, The Supreme Prelate, The Supreme Keeper of Records and Seal, The Supreme Master of Exchequer, The Supreme Master at Arms, The Supreme Inner Guard, The Supreme Outer Guard, The President of the Board of Control of the Endowment Rank, The Major General of the Uniform Rank, who shall be elected biennially, as provided by law, and shall hold office for the term of two years, or until their successors
172 shall have been duly elected and installed. The Supreme Chancellor and the Supreme Vice Chancellor shall be elected from the members of the Supreme Lodge, but to all other offices any past grand chancellor who has received the Supreme Lodge Rank, and who is in good standing in his grand and subordinate lodges, shall be eligible; provided that, at the time of his election and during the term of his service, the President of the Board of Control shall be also a member in good standing of a section of the Endowment Rank; provided, also, that, at the time of his election and during the term of his service, the Major General of the Uniform Rank shall be also a member in good standing of a company of the Uniform Rank.

Section 3. Supreme Representatives shall be elected by the grand lodges in the same manner as grand lodge officers are elected; provided that if, under this constitution, a vacancy occur or a grand lodge become entitled to increased representation, and no regular convention of such grand lodge is to be held prior to the next regular convention of the Supreme Lodge, then such vacancy may be filled or such increased representation may be provided for by appointment, in such manner as the grand lodge may by law provide; otherwise, such vacancy shall be filled or increased representation provided for by election, by the grand lodge, in the same manner as grand lodge officers are elected.

173 Section 4. The representation of each grand lodge shall be as follows: Two Supreme Representatives at large, and one additional Supreme Representative for each ten members of the subordinate lodges within the domain of such grand lodge on the thirty-first day of December immediately preceding the election or appointment of such Supreme Representative; provided that no grand lodge shall be entitled to more than five Supreme Representatives.

Section 5. The term of a Supreme Representative shall be four calendar years from the first day of January in the even-numbered year following his election; provided that the term of any Supreme Representative, other than a Supreme Representative at large, who may be elected or appointed in an even-numbered year, shall expire on the thirty-first day of December of the next succeeding odd-

numbered year; provided also that the Supreme Lodge may by statute so regulate such terms of service that the terms of one-half, as near as may be, of the Supreme Representatives from any grand lodge shall expire on the thirty-first day of December of each odd-numbered year.

Section 6. A Supreme Representative, at the time of his election or appointment, must be a past grand chancellor in good standing in his grand lodge, and in a subordinate lodge within its domain not the holder at any time during his term of any office in his grand lodge, and during all of such term an actual and bona fide resident of the domain of such grand lodge; and should a Supreme Representative fail to be in good standing in or cease to be
174 a member of his grand lodge and of a subordinate lodge within its domain or should he accept and hold any office in his grand lodge, or should he cease to be an actual and bona fide resident of the domain of his grand lodge, then, or in either of such cases, his rights as Supreme Representative shall cease and determine, and a vacancy shall be held to exist in such position.

Section 7. All past grand chancellors in good standing in their respective grand and subordinate lodges, who shall have received the Supreme Lodge rank, shall be admitted to the convention of the Supreme Lodge, and shall be eligible to appointment as members of special committees thereof.

Section 8. The regular conventions of the Supreme Lodge shall be held biennially, at such time and place as may have been designated at the preceding regular convention; provided that, if the time and place were not so designated, a convention shall be held in the city of Washington, in the District of Columbia, on the fourth Tuesday of April in the succeeding even-numbered year; and provided also, that, should any public calamity or imperative exigency so require, the Supreme Chancellor, by and with the consent of a majority of the officers of the Supreme Lodge, may designate a different time or place at which such convention shall be held.

Section 9. A quorum of the Supreme Lodge for the transaction of business shall not be less than one Supreme Representative from each of a majority of the grand lodges; provided that Supreme Representatives from one third of the grand lodges may re-
175 ceive and act upon certificates and credentials, and a less number may meet and take a recess from day to day.

Section 10. The following powers are reserved to the Supreme Lodge:

Par. a. To pass upon and determine all questions relative to the qualifications and election of its members.

Par. b. To enact laws for its own government and protection and to prescribe rules of procedure for the conduct of its business.

Par. c. To prescribe the powers and duties of its committees.

Par. d. To prescribe the powers and duties of its officers, except as they may be fixed by its ritual and the Supreme constitution.

Par. e. To provide by law a revenue for the Supreme Government.

Par. f. To make appropriations of money for the maintenance of the Supreme Government.

Par. g. To provide the installation and other non-ritualistic ceremonies of the order, and to regulate by law their preparation, promulgation and use.

Par. h. To define offenses against the order and against the Supreme law, and to prescribe penalties therefor.

Par. i. To provide by law for the compilation, publication, and enforcement of the decrees of the Supreme Tribunal.

Par. j. To grant charters to grand lodges, and to provide by law for their issue, revocation, suspension, restoration and
176 reissue.

Pr. k. To provide by law for the institution of grand lodges and of subordinate lodges.

Par. l. To enact such laws as shall secure the conformity to the Supreme Law of the constitutions and the laws of all grand and subordinate Lodges.

Par. m. To require from grand lodges, and subordinate lodges under the immediate control of the Supreme Lodge, such reports as may be prescribed by law.

Par. n. To require from any officer of a grand lodge such reports, credentials or certificates as may be prescribed by law.

Par. o. To establish subordinate lodges in territory not within the domain of a grand lodge, and to enact laws for their government.

Par. p. To fix by law uniform conditions upon which the ranks of the order may be attained.

Par. q. To prescribe by law the rights, benefits, privileges and duties pertaining to all ranks and honors of the order, so far as the same are not determined by the rituals of the order.

Par. r. To prescribe by law the paraphernalia, emblems, jewels, and insignia of the order, and in like manner to control and regulate their use.

Par. s. To control and regulate by law the use of the name of the order, or any name or term derived therefrom or germain thereto.

177 Par. t. To provide and furnish all certificates of membership, rank, or honor, and receipts for dues, and to regulate their use, and to prescribe and furnish such other supplies as may be designated by law.

Par. u. To regulate by law the promulgation, communication, and use of the passwords of the order.

Par. v. To provide by law what shall constitute good standing in the order.

Par. w. To define by law the status of members of the order under suspension of any cause, the control which may be exercised over such members, and the methods by which they may regain membership.

Par. x. To provide by law for the severance or transfer of lodge membership.

Par. y. To enact laws for the promotions of the general welfare of the order.

Par. z. To enact laws which shall be necessary to carry into execution all powers vested in the Supreme Government by the Supreme Constitution of any amendment thereof.

Section 11. The Supreme Lodge may by law provide for the impeachment and removal from office of the Supreme Chancellor or a Supreme Tribune, and for the trial and removal from office of any officer of the Supreme Lodge other than the Supreme Chancellor, and for the trial and expulsion of members of the Supreme Lodge; it may define the offenses for which such proceeding or other of them will lie; but judgment in such cases shall not extend
178 beyond removal from office and disqualification to hold office in the order thereafter. In all cases, removal from office or removal from and disqualification to hold office shall require the affirmative vote, by yeas and nays, of two thirds of all the members of the tribunal which shall have been established for the trial thereof; provided that conviction shall not preclude or prevent the trial of the party for the same offense in any other tribunal of the order having jurisdiction.

Section 12. All laws enacted by the Supreme Lodge shall be of general application, and shall be formulated as statutes and shall be styled "Supreme Statutes," and, when introduced and while under consideration, shall be styled "propositions".

Section 13. A proposition shall embrace no more than one subject; which shall be clearly expressed in its title.

Section 14. A proposition which provides for the repeal or amendment of a statute shall recite in its title the number of the division, parts and chapter, the title of the chapter and the number of the statute to be repealed or amended.

Section 15. No proposition shall become a statute until it shall have passed three successive readings, the second and third of which shall not be had on the same calendar day.

Section 16. The affirmative vote, by yeas and nays, of a majority of all the members of the Supreme Lodge shall be required for the final passage of a proposition.

179 Section 17. When a proposition shall have failed to pass, no proposition embracing the same subject matter shall be considered at the same convention of the Supreme Lodge.

Section 21. No moneys shall be drawn from the exchequer of the Supreme Lodge except as provided by law.

Section 22. A statement of all receipts and expenditures of the Supreme Government shall be reported by the proper officers to the Supreme Lodge, and shall be included in the official record of each regular convention thereof.

Section 23. A journal of the proceedings of the Supreme Lodge shall be kept, and shall be published daily during each regular convention thereof. Such daily journal shall be prima facie evidence of all acts of the Supreme Lodge therein recorder until the publication of the Official Record of the Supreme Lodge. Such daily journal and Official Record shall be published in such manner as the Supreme Lodge may by law provide.

Article VIII. The Executive Department.

Section 1. The executive powers of the Supreme Government shall be vested in the Supreme Chancellor of the Order of Knights of Pythias, who shall be elected and shall hold his office as provided in this constitution.

Section 2. The Supreme Chancellor, at the time of his election, shall be a member of the Supreme Lodge, and shall have attained the rank of knight at least ten years prior to such election.

180 Section 3. The Supreme Chancellor shall be Commander in Chief of the Uniform Rank.

Section 4. In case of the removal from office of the Supreme Chancellor, or of his death, resignation or inability to discharge the duties of said office, said duties shall devolve on the Supreme Vice Chancellor.

Section 5. The Supreme Chancellor shall enforce the Supreme law and the decree of the Supreme Tribunal.

Section 7. The Supreme Chancellor may require information in writing from any member of the order as to any matter within the knowledge of such member, pertaining to the welfare of the order or the observance of the Supreme Law.

Section 8. Except when otherwise provided by law, the Supreme Chancellor shall fill by appointment any vacancy in an office of the Supreme Lodge which may occur during its recess.

Section 9. The Supreme Chancellor may, as provided by law, appoint and commission Deputy Supreme Chancellors for such duties as he may delegate to them.

Section 10. The Supreme Chancellor, at each regular convention of the Supreme Lodge, shall submit to it a report of all his official acts during its recess. His report shall contain information in regard to the state of the order, and such recommendations as he may deem necessary or expedient.

181 Section 11. The Supreme Chancellor may call special conventions of the Supreme Lodge in the manner provided by law.

Section 12. The Supreme Chancellor, during the recess of the Supreme Lodge shall have authority to grant, in the manner provided by law, warrants for the institution of grand lodges, and for the institution of subordinate lodges under the immediate control of the Supreme Lodge; and warrants so granted shall be in force until suspended or revoked in the manner provided by law, or superseded by charters duly granted.

Section 13. The Supreme Chancellor shall have power to grand such dispensations as the Supreme Lodge may authorize by law.

Section 14. The Supreme Chancellor shall require execution and delivery to him of the bonds which may by law be required of officers of the Supreme Lodge, and he shall be the custodian of such bonds.

Section 15. The Supreme Chancellor shall select, and promulgate in the manner provided by law, passwords for the order, and may change the same when in his judgment it may be advisable.

Section 16. The Supreme Chancellor shall perform such other duties as may be provided by Supreme Law.

Section 17. The Supreme Chancellor shall receive such compensation as the Supreme Lodge may provide by law, which compensation shall not be increased or diminished during his term of office.

182 Article X. Grand Lodges.

Section 1. A grand lodge shall not be instituted with less than ten subordinate lodges.

Section 2. A grand lodge shall be composed only of past chancellors who have attained the grand lodge rank.

Section 3. The domain of a grand lodge, except as otherwise provided in its warrants or charter, shall be the state, district, territory or province in which the same is located.

Section 5. A grand lodge shall not be instituted within the domain of another, nor shall any grand lodge be created by the consolidation of two or more grand domains or parts thereof, except by the Supreme Lodge, upon the request or by the consent of the grand lodges involved.

Section 6. A grand lodge shall exercise within its domain all power and authority not reserved to the Supreme Government by the Supreme constitution.

Section 7. A grand lodge shall not engage in the business of life or accident insurance, or any other business not in consonance with the purposes for which it was created, nor shall an officer or officers of a grand lodge, as such, engage in such business.

Section 8. A grand lodge shall prescribe the powers and duties of its officers, except as they may be fixed by Supreme law.

183 Section 9. The ritualistic officers of a grand lodge shall be such as are prescribed in the grand lodge ritual. The constitutional officers of a grand lodge shall be such as may be provided in its constitution.

Section 10. The term of a ritualistic officer of a grand lodge shall be one official year, subject to the provisions of section 13 of this article.

Section 11. Each grand lodge shall have a constitution for its own government, and shall provide such legislation as shall secure conformity to the Supreme law, and to the decisions of the Supreme Tribunal from the subordinate lodges and members of the order within its domain; but a grand lodge shall not enact or enforce any law which shall abridge the rights or privileges secured to a member of the order by the Supreme law.

Section 12. A grand lodge may create, by constitutional provision, three independent co-ordinate departments, viz., a legislative department, to be known as the grand lodge, in which shall be vested all legislative powers; an executive department, to be known as the grand chancellor, in whom shall be vested all executive powers; and a judicial department, to be known as the grand tribunal, in which shall be vested all judicial powers.

Section 13. Each grand lodge shall provide by law for the holding of regular conventions annually or biennually; provided, however, that not more than one regular convention shall be held in any calendar year.

184 Section 14. Each grand lodge shall display its warrant or charter at the station of the grand chancellor at some time during every convention.

Section 15. Each grand lodge may provide by law that the subordinate lodges within its domain shall or shall not pay weekly benefits, or that the question of payment of such benefits may be determined by each subordinate lodge for itself.

Section 16. The warrant or charter of a grand lodge may be suspended by the Supreme Chancellor or the Supreme Lodge, as may be provided by law.

Section 17. The suspension of a warrant or charter of a grand lodge may be terminated by the Supreme Chancellor or the Supreme Lodge, as may be provided by law.

Section 18. The warrant or charter of a grand lodge may be revoked only by the Supreme Lodge, as may be provided by law.

Section 19. The constitutions and laws of grand and subordinate lodges, which may be in force at the date of the adoption of this constitution are hereby declared to be operative so far as they do not conflict with the Supreme law as established by this constitution.

Article XI. Subordinate Lodges.

Section 1. A subordinate lodge shall be instituted only as may be provided by Supreme law, and shall exist only by virtue of a warrant or charter issued in accordance therewith; it shall consist

185 of not less than ten members, seven of whom shall constitute a quorum; it shall have and exercise subordinate Pythian authority and control over such territory as may be prescribed by law, subject to the laws established by the Supreme Government and by its grand lodge. Two or more subordinate lodges may be given concurrent territorial jurisdiction when located in the same city or town or other contiguous territory.

Section 2. The ritualistic officers of a subordinate lodge shall be such as are designated in the subordinate lodge ritual. They shall be nominated, elected and installed, and vacancies in office shall be filled, as provided by Supreme law. The official terms of such officers shall continue for twelve months from January 1st in each year, or until their successors are elected and installed; provided that, in domains in which grand lodges so enact such terms shall continue for six months from January 1st and July 1st in each year.

Section 3. A subordinate lodge may elect or appoint such trustees or other non-ritualistic officers as may be authorized by its grand lodge.

Section 4. Each subordinate lodge shall display its warrant or charter in the lodge room whenever in session.

Section 5. No convention for the transaction of business or work shall be held, and no excursion or entertainment shall be had, by

a subordinate lodge on the first day of the week, commonly called Sunday.

186 Section 6. The ranks of knighthood shall be attained and conferred only in accordance with the requirements of the Supreme law. The conditions of eligibility to such ranks shall be uniform and shall be fixed by the Supreme statutes; provided always, that no person shall be initiated into the order unless he be a white male, of good moral character, twenty-one years of age and a believer in a Supreme Being; and provided further that the fees for the ranks of knighthood shall not be less than ten dollars in the currency of the United States of America or its equivalent in the currency of the country in which the lodge is located.

Section 7. Membership in a subordinate lodge may be attained only as provided by the Supreme law. Every person claiming the rights, benefits and privileges of the order must be a member of a subordinate lodge.

Section 8. Each grand lodge may provide by law that the subordinate lodges within its domain shall or shall not provide for and pay upon the death of a member thereof in good standing a funeral benefit, or that the question of the payment of such benefit and the amount thereof may be determined by each subordinate lodge for itself.

Section 9. The warrant or charter of a subordinate lodge shall not be arrested, suspended, revoked or restored, except in the manner prescribed by Supreme Lodge.

187 Article XII. The Insurance Branch.

Section 1. The purpose of the insurance branch shall be to provide indemnity for the beneficiaries of deceased members of the order.

Section 2. The insurance branch of the order shall be governed by such laws as the Supreme Lodge may enact or authorize; provided that the attainment of membership in such insurance branch shall be restricted to members of the order who have attained the rank of knight and are in good standing in a subordinate lodge, but shall not be compulsory upon any member of the order.

Article XIII. The Military Branch.

Section 1. The purpose of the military branch shall be to promote a military spirit among its members.

Section 2. The military branch of the order shall be governed by such rituals and laws as the Supreme Lodge may enact or authorize provided that membership in such military branch shall be restricted to members of the order who have attained the rank of knight and are in good standing in a subordinate lodge, but shall not be compulsory upon any member of the order.

Article XIV. Rituals.

Section 1. The rituals of the order shall be the existing written or printed secret ceremonies, obligations and secret work heretofore

established for the Supreme Lodge, for grand lodges, for subodinate lodges and for the military branch of the order.

188 Section 2. Any amendment of the rituals of the order may be proposed in secret session at a regular convention of the Supreme Lodge, and shall be considered and may be adopted in accordance with the Supreme statutes; provided that such amendment shall require for its adoption the affirmative vote by yeas and nays, of four-fifths of all the members of the Supreme Lodge, such vote to be taken at the succeeding regular convention thereof, and then only after a full exemplification, in the presence of the Supreme Lodge, of the change proposed by each amendment.

Section 3. The rituals of the order, as to matters therein contained, shall be the paramount law of the order; but no change or amendment of such rituals shall be obnoxious to or in conflict with the Supreme constitution or any amendment thereof, nor shall any amendment of the Supreme constitution be obnoxious to or in conflict with the paramount law as contained in the rituals.

Section 4. The promulgation, issue, custody and use of the rituals of the order shall be as provided by the Supreme statutes.

Article XV. General Provisions.

Section 1. All constitutions, legislation and decisions of the Supreme Lodge and all rulings of the Supreme Chancellor, in force prior to the adoption of this constitution, are hereby repealed and annulled, except as in this article otherwise specifically provided.

Section 2. The ranks of Past Supreme Chancellor, Past Supreme Representative, past grand chancellor, past grand representative, and past chancellor, heretofore acquired, shall be known here-

189 after as the honors of Past Supreme Chancellor, Past Supreme Representative, past grand chancellor, past grand representative, and past chancellor respectively.

Section 6. The laws heretofore enacted for the government of the Endowment Rank, and in force at the date of the adoption of, and so far as they do not conflict with, this constitution, shall continue in force as the laws for the government of the insurance branch until superseded by statutes duly enacted.

Section 7. The laws heretofore enacted for the government of the Uniform Rank, and the rulings of the Supreme Chancellor relative thereto, in force at the date of the adoption of, and so far as they do not conflict with, this constitution, shall continue in force as the laws for the government of the military branch until superseded by statutes duly enacted.

Section 8. The laws of any grand or subordinate lodge which conflict with or contravene this constitution are hereby annulled; and an attempt to enforce such laws is declared to be an act of contumacy, punishable as the Supreme Lodge may by law provide.

Supreme Statutes.

Be it enacted by the Supreme Lodge Knights of Pythias, That the following code of statutes from Title I to Title XI, inclusive, shall

constitute and be known as the Supreme statutes of the order
190 of Knights of Pythias, and shall be designated and cited by words, "Supreme Statutes," adding the number of title, chapter and section, when necessary; and as such are hereby adopted and shall become the law of the order, to take effect from and after the adoption of this enacting clause, except such parts thereof as to which a different provision is made therein.

1. The Supreme Chancellor, whenever in his judgment, concurred in by three other officers of the Supreme Lodge, the interests of the order require it, shall call a special convention of the Supreme Lodge at a time and place to be fixed by him, to consider such matters only as may be specified in such call. At least thirty days' notice of the time and place of such special convention, and of the matters to be considered, shall be given to each member of the Supreme Lodge.

19. There shall be elected by each grand lodge in each odd-numbered year, in the same manner as grand lodge officers are elected, one Supreme Representative, who shall be known as a Supreme Representative at large, and whose term shall continue for four years from the first day of January following such election.

20. Any grand lodge hereafter organized shall, at the time of its institution, elect while in convention assembled two Supreme Representatives, who shall be known as Supreme Representatives at large. The terms of the Supreme Representatives so elected shall be, one for two years and one for four years from the first day of January of the first even-numbered year following such election.

191 21. Whenever the regular semi-annual reports from the subordinate lodges with- the domain of a grand lodge, for the term ending December 31st of the preceding year, shall show the total membership of such subordinate lodges to equal or exceed ten thousand members, then such grand lodge shall be entitled to one additional Supreme Representative for such ten thousand members; provided that no grand lodge shall be entitled to more than five Supreme Representatives.

56. The revenue of the Supreme Government shall be derived from a per capita tax, fees for warrants, the sale of supplies and fines.

57. Each grand lodge shall pay to the Supreme Lodge, semi-annually, on or before the 31st day of March and the 30th day of September, each year, such per capita tax as may be determined by resolution at each biennial convention of the Supreme Lodge, for each member in good standing on the 31st day of December next preceding; provided that if the tax herein provided for shall not be paid at the dates named, a penalty shall be added of one dollar per day for every day that shall elapse until the same shall have been paid; provided, also that until the said per capita tax and the penalty, if any, shall have been paid, the grand domain so delinquent shall not be entitled to representation in the Supreme Lodge, and the Supreme Chancellor shall in his discretion arrest its charter.

61. All official jewels and the following printed supplies shall be obtained only from the Supreme Keeper of Records and Seal,
192 the Supreme Lodge reserving the exclusive right to provide the same. (Then follows enumeration of supplies.)

68. The funds of the Supreme Lodge shall not be applied to any purpose that is inconsistent with the principles or purposes of the order.

80. In the case of a vacancy in the office of Supreme Chancellor, caused by the death, resignation or removal from office of the incumbent as provided by law, the duties of the office shall immediately devolve upon the Supreme Vice Chancellor, who shall act as Supreme Chancellor for the remainder of the current biennial term, and until the said office shall have been duly filled by election and installation at the ensuing regular convention of the Supreme Lodge.

81. While acting as Supreme Chancellor, in case of a vacancy in said office, the Supreme Vice Chancellor shall be known as and styled "Supreme Chancellor ad interim," and shall be entitled during the period of such service to all the honors, benefits, privileges, salary and emoluments of such office; and upon the completion of the term of service, as hereinbefore provided, he shall be entitled to the honor of Past Supreme Chancellor; provided that, in case such vacancy in the office of Supreme Chancellor shall have been caused by removal from said office, such honor shall not be so attained, unless such vacancy shall have occurred at least sixty days prior to and exclusive of the date fixed by the Supreme Lodge for its ensuing biennial convention.

193 82. While acting as and discharging the duties of Supreme Chancellor, during the temporary absence or disability of the incumbent of such office, the Supreme Vice Chancellor shall be known and styled "Supreme Chancellor pro tempore."

83. Within ten days from the time a vacancy shall have been caused by the death, resignation or removal from office of the Supreme Chancellor, the Supreme Chancellor ad interim shall appoint a Supreme Representative to the office of Supreme Vice Chancellor, and shall, prior to the ensuing convention of the Supreme Lodge, install such officer.

84. If, in case of the death, resignation, impeachment or removal from office of the Supreme Chancellor, a vacancy should exist in the office of Supreme Vice Chancellor, caused by the death, resignation or removal from office of the incumbent of such office, or in case of the death of the Supreme Vice Chancellor before entering upon the duties of Supreme Chancellor, then, and in such case, the Supreme Keeper of Records and Seal shall forthwith notify each office of the Supreme Lodge of the existence of such vacancies in the offices of Supreme Chancellor and Supreme Vice Chancellor, and shall appoint a time and place at which such officers shall assemble in council. The place selected for such council shall be so situated that it may be reached before the date fixed for the assembly by a majority of the said officers in not more than three days continuous travel by the ordinary modes of conveyance, and the time
194 selected shall not be more than ten days subsequent to the date upon which the vacancy in the office of Supreme Vice Chancellor shall have occurred.

89. A deputy Supreme Chancellor shall be deemed the representative of the Supreme Chancellor, and may be appointed or removed

by him at his discretion and pleasure. He shall be subject at all times to the instructions and control of the Supreme Chancellor, and shall be responsible to him for the manner in which his duties are discharged.

90. Every Deputy Supreme Chancellor shall receive from the Supreme Chancellor a commission, under his official seal, and the powers and duties of any Deputy Supreme Chancellor shall be as set forth in such commission, and not otherwise. Such commission, unless sooner revoked, shall expire by its own limitation, or with the term of office of the Supreme Chancellor issuing the same.

91. A Deputy Supreme Chancellor shall not be permitted to delegate or transfer the powers and duties conferred by his commission, nor any of them, to any other person or persons whomsoever.

(Sections 150 to 181 provide for the institution of Grand Lodges, etc.)

(Sections 182 to 202 provide for the institution of subordinate lodges by Grand Lodges, etc.)

195 203. The conditions of eligibility to apply for the ranks of knighthood, and the manner in which such ranks, or any of them may be attained, shall be as prescribed in this chapter, and not otherwise.

204. An appointment for the ranks of knighthood must possess the following qualifications:

Par. a. He must be a white male.

Par. b. He must be of good moral character.

Par. 3. He must not be less than twenty-one and not more than fifty years of age, except that a person more than fifty years of age may become eligible by dispensation.

Par. d. He must be a believer in a Supreme Being.

Par. e. He must be in good health and sound in mind and body, except that a maimed person may become eligible by dispensation.

Par. f. He must be able to read and write.

Par. g. He must not be engaged in either of the occupations known as profes-ional gambler, saloon-keeper, bar-tender or retail dealer in spirituous liquors, wine, ale, or beer (except as a bona fide hotel-keeper or druggist.)

Par. h. He must believe in the maintenance of order and the upholding of constituted authority in the government in which he lives.

Par. i. He must not have been rejected by any subordinate lodge as an applicant for the ranks of knighthood within the six months preceding his application.

196 205. Any person eligible under the provisions of the preceding section may make application for the ranks of knighthood to any subordinate lodge within whose territorial jurisdiction he has his actual residence.

206. Par. a. If a person desires to apply to a subordinate lodge other than the one in whose territorial jurisdiction he resides, but in the same grand domain, such application must be accompanied by the permission of a lodge within whose territorial jurisdiction he has his residence.

207. The application shall be in form as follows:
(Then follows form.)
208. The application shall be signed in the applicant's own handwriting, and endorsed by two members of the lodge in good standing, who have attained the rank of knight, and must be accompanied by the prescribed fee. If the lodge so require, such application must be accompanied by the certificate of a physician, approved by the lodge, as to the health of the applicant. Except as provided in this and the preceding sections, no application for the ranks of knighthood shall be received or considered by a lodge of the order.

The validity of charters granted prior to the enactment of these statutes, and of different forms from that herein prescribed, shall not be affected thereby.

271. No subordinate lodge shall surrender its warrant or charter so long as seven members shall vote against such surrender,
197 nor unless two weeks' notice in writing of the conaention at which the proposed surrender is to be acted on shall have been given to every member of the lodge.

Board of Control.

318. The Board of Control of the Endowment Rank shall be composed of the Supreme Chancellor and the Supreme Vice Chancellor, ex-officio, and five members who shall be elected by the Supreme Lodge.

349. Local branches of the Endowment Bank shall be termed sections, and shall exist by virtue of warrants of authority issued by the Board of Control as hereinafter provided.

356. An application for admission to membership in the Endowment Rank must be a Knight of Pythias in good standing, not over fifty years of age, make application on the form provided by the Board of Control of the Endowment Rank, in accordance with the "rules and instructions for medical examiners" on said application, pay a membership fee of one dollar for each $1,000 endowment applied for and be accepted by the Board of Control before he shall be entitled to membership and the benefits accruing therefrom.

410. The military branch of the Knights of Pythias shall be organized in the following formations, to be composed of infantry, cavalry or artillery.

(Then follows provisions for formations, officers, etc.)
(Sections 431 to 454 are concerning the secret work of the order.)
(Sections 455 to 524 are concerning offenses, trials and punishments.)

198 525. The order of Knights of Pythias having been instituted and established on the 19th day of February, 1864, the Pythian Period is hereby declared to date therefrom, and each and every year thereafter shall succeed in numerical order, commencing with that date.

(Sections 526 to 555 contain miscellaneous provisions.)

The ninth biennial report of the Board of Control of the Endow-

ment Rank, published by authority of the Supreme Lodge Knights of Pythias, the front cover of said printed report being as follows:

SUPREME LODGE

KNIGHTS OF PYTHIAS

Endowment Rank

Knights of Pythias

F. C. B.

Ninth Biennial Report

Board of Control

September,

1906.

The following extracts from said report are material to this cause:

Itemized statement of receipts for fiscal year ending March 31st, 1905, showing total receipts of $2,262,726.45. Itemized state-
199 ment of receipts for fiscal year ending March 31st, 1906, showing total receipts of $2,276,086.03.

Itemized statement of disbursements for fiscal year ending March 31st, 1905, showing total disbursements for death benefits $1,542,530.84. Other disbursements $797,226.47. Making total disbursements $2,339,757.31.

Itemized statement of disbursements for fiscal year ending March 31st, 1906, showing total disbursements for death benefits $1,424,941.55. Other disbursements $844,395.09, total disbursements $2,269,336.64.

Itemized statement of resources and liabilities, showing a summary of resources $11,515,337.42. Liabilities $208,014.15. Resources in excess of liabilities $1,307,293.27.

Statement of membership and protection for fiscal year ending March 31st, 1905 and 1906, showing number of certificates in force March 31st, 1905, number of members 69,568; amount of protection $111,231,500.00. Certificates in force March 31st, 1906, number of members 76,791; amount of protection $119,496,000.00.

Statement of sections for fiscal year ending March 31st, 1905 and 1906, showing sections in operation March 31st, 1905 4196, of which, in the State of Georgia there were sections in active operation 108, number of members 1977, protection in force $3,657,000.
200 Also showing the number of claims in Georgia adjusted since organization of Endowment Rank 262, and death benefits paid in Georgia by the Endowment Rank $628,662.30.

Sections in operation March 31st, 1906, 4549, of which, in the State of Georgia there were sections in active operation 143, num-

ber of members 2327, protection in force $4,113,500.00. Also showing number of claims in Georgia adjusted since the organization of the endowment Rank 285, and death benefits paid in Georgia by the Endowment Rank $685,662.30.

Statement of death claims adjusted and paid annually since organization of the Endowment Rank from 1878 to 1906 inclusive, showing for fiscal year ending July 31st, 1878, number of claims paid 11, amount paid $19,517.00, with the number of claims and amount paid for each year following ending with fiscal year ending March 31st, 1906, number of claims paid 783, amount paid $1,424,941.55, all the years showing total number of deaths 12,092 and total amount paid to beneficiaries $23,431,129.64.

Statement of resources and liabilities for the quarter ending June 30th, 1906, showing in summary, resources $1,628,937.89; liabilities $28,852.30, resources in excess of liabilities $1,500,085.59.

Statement of receipts and disbursements for quarter ending June 30th 1906, showing total receipts for quarter $578,199.75, and total disbursements for quarter $1,532,853.63, of which $380,396.70
201 was death benefits paid.

The laws enacted by the plaintiff, Grand Lodge Knights of Pythias of Georgia, and published by it in a volume entitled, as printed on the front cover thereof, "Constitution and Statutes of the Grand Lodge Knights of Pythias, Domain of Georgia" of which laws the following extracts are material herein:

Constitution of the Grand Lodge Knights of Pythias of Georgia.

Article I.

The Grand Lodge Knights of Pythias of Georgia, acknowledging its allegiance to the Supreme Lodge Knights of Pythias, does ordain and establish the following Constitution of the government of the Order in the Domain of the State of Georgia.

Article II.

Section 1. The Grand Lodge Knights of Pythias of Georgia recognizes that all the laws of the Order bear the following relative relation, and shall be obeyed and enforced accordingly in this Grand Domain:

(a) The Rituals of the Order.
(b) The Constitution of the Supreme Lodge.
(c) The Statutes of the Supreme Lodge.
(d) The Constitution of this Grand Lodge.
(e) The Statutes of this Grand Lodge.
(f) The By-Laws of Subordinate Lodges.

202 Article II. Title.

Section 1. This body shall be known as the Grand Lodge Knights of Pythias of Georgia, existing by virtue of a charter, duly and regularly issued by the Supreme Lodge Knights of Pythias, on the 20th day of March, 1871.

Article IV. Structure of the Order in this Grand Domain.

Section 1. The Order in the Domain of Georgia shall be constituted as follows:

Par. (a) A Grand Government.

Par. (b) Such subordinate lodges as possess charters or warrants, legally granted by this Grand Lodge, which have not been surrendered, suspended or revoked.

Article V. The Grand Government.

Section 1. The Grand Government for the Domain of Georgia shall consist of two independent, co-ordinate departments, viz., A Legislative and an Executive Department.

Article VI. The Legislative Department.

Section 1. The legislative powers of the Grand Government shall be vested in a Grand Lodge, which shall be composed of:

Par. (a) All Past Grand Chancellors in good standing in their respective subordinate Lodges in this Domain.

Par. (b) Its officers as designated in this Constitution.

203 Par. (c) The Grand Representatives legally elected.

Par. (d) Members of all standing Committees; provided, that such committees shall be appointed from Past Grand Chancellors, and the Grand Representatives elected from the various subordinate Lodges; provided further, that members of standing committees shall be eligible to reappointment on any standing committee.

Section 2. The Grand Lodge shall have both original and appellate, but not exclusive, jurisdiction of all controversies arising upon the construction and enforcement of the Supreme and Grand laws, and the By-Laws of Subordinate Lodges in this Domain.

The appellate jurisdiction of the Grand Lodge may be invoked in all cases by appeal or writ of error, under such rules of procedure as it may prescribe.

Section 3. The officers of this Grand Lodge shall be: A Grand Chancellor, a Grand Vice Chancellor; a Grand prelate, a Grand Keeper of Records and Seal; a Grand Master of Exchequer; a Grand Master at Arms; a Grand Inner Guard; a Grand Outer Guard; the Supreme Representatives. These officers shall be elected annually at the regular Conventions of the Grand Lodge, and shall hold office until their successors are duly elected and installed. Any Past Chancellor in good standing in any Lodge in this Domain, and in possession of the Grand Lodge Rank, shall be eligible to any office in this Grand Lodge, except Supreme Representatives.

204 Section 4. This Grand Lodge, at its regular Convention in the year 1897, and every two years thereafter, shall elect one Supreme Representative, at the same time and in the same manner as all other Grand Lodge Officers are elected.

Section 5. Each Subordinate Lodge shall be entitled to Representatives as follows: Lodges having 100 members or less, shall be

entitled to one representative; Lodges having between 100 and 200 members shall be entitled to two representatives; Lodges having 200 members or over, shall be entitled to three representatives. The basis of representation under this section shall be the membership as shown on the report of the Subordinate Lodge for the term ending December 31st, preceding the session of this Grand Lodge.

Section 7. A Grand Representative must be a Past Chancellor in good standing in his Subordinate Lodge. Should a Grand Representative cease to be in good standing or cease to be a member of the Subordinate Lodge electing him, then his rights as Grand Representative shall cease, and a vacancy shall be held to exist.

Section 8. All Past Chancellors in good standing in their respective Subordinate Lodges, who have received the Grand Lodge Rank, shall be admitted to the Conventions of the Grand Lodge.

Section 9. The regular Conventions of this Grand Lodge shall be held annually on the third Tuesday in May at 9 o'clock a. m., at such places as may have been designated in the preceding regular Convention; provided, that should any public calamity or
205 imperative exigency require, the Grand Chancellor, by and with the consent of a majority of the officers of the Grand Lodge, may designate a different time or place at which such Conventions shall be held.

Section 11. The following powers are reserved to this Grand Lodge, to-wit:

Par. (a) To pass upon and determine all questions relative to the qualifications and election of its members.

Par. (b) To enact laws for its own government and protection, and to prescribe rules of procedure for the conduct of its business.

Par. (c) To prescribe the powers and duties of its committees.

Par. (d) To prescribe the powers and duties of its officers, except as they may be fixed by the Ritual, the Supreme and this Constitution.

Par. (e) To provide by law a revenue for the Grand Government.

Par. (f) To make appropriations of money for the maintenance of the Grand Government.

Par. (g) To define offenses against the Grand law, and to prescribe penalties therefor.

Par. (h) To provide by law for the institution of Subordinate Lodges within this Domain.

Par. (i) To grant charters to subordinate lodges within this Domain, and to provide by law for the issue, revocation, suspension, restoration and reissue of such charters.

206 Par. (j) To enact such laws as shall secure the conformity of the By-laws of the Subordinate Lodges to the Grand Law.

Par. (k) To require from Subordinate Lodges within this Domain such reports as may be prescribed by law.

Par. (m) To prescribe by law what shall constitute good standing in the Order, except as provided by Supreme Law.

Par. (n) To enact laws for the general welfare of the Order in this Domain.

Par. (o) To enact laws which shall be necessary to carry into

execution all powers vested in this Grand Government by the Supreme Constitution, or any amendment thereof.

Par. (p) To exercise all powers and authority not reserved to the Supreme Government or prohibited thereby.

Article VII. The Executive Department.

Section 1. The executive powers of this Grand Government shall be vested in a Grand Chancellor, who shall be elected and shall hold his office as provided in this Constitution.

Section 10. During the recess of the Grand Lodge, the Grand Chancellor shall have authority to hear and determine all controversies; his decisions in all cases being subject to review by the Grand Lodge. It shall be his duty to enforce conformity to the Supreme and Grand laws.

Section 14. The Grand Chancellor shall perform such other duties as may be provided by the Supreme and Grand Law-.

207 Article VIII. Subordinate Lodges.

Section 1. A subordinate lodge shall be instituted only as may be provided by law, and shall exist only by virtue of a warrant or charter issued in accordance therewith, seven of whom shall constitute a quorum. It shall have and exercise Subordinate Pythian authority and control over such territory as may be prescribed by law, subject to the laws established by the Supreme and this Grand Government. Two or more Subordinate Lodges may be given concurrent territorial jurisdiction when located in the same city or town, or contiguous territory.

Section 7. Membership in a Subordinate Lodge may be attained only as provided by Supreme Law. Every person claiming the rights, benefits and privileges of the Order must be a member of a subordinate Lodge.

Section 8. Each Subordinate Lodge shall provivde for any pay upon the death of a member thereof in good standing, a funeral benefit of not less than twenty dollars.

Section 9. The payment of other benefits shall not be compulsory, but each subordinate Lodge may provide for the payment of a sick benefit in such amount and upon such conditions as by its By-laws it may determine.

Statutes of the Grand Lodge Knights of Pythias of Georgia.

Be it enacted by the Grand Lodge Knights of Pythias of Georgia, That the following Statutes shall constitute and be known as the Grand Statutes of the Order of Knights of Pythias of
208 Georgia, and, as such, are hereby adopted and shall become the law of the Order, to take effect from and after the adoption of this enacting clause, except such parts thereof as to which a different provision is made therein.

16. The revenue of the Grand Government shall be derived from per capita tax, fees for warrants and charters, fees for dispensations and the sale of supplies.

To Regulate the Attainment of the Ranks of Knighthood.

132. The conditions of eligibility to apply for the Ranks of Knighthood, and the manner in which such ranks, or any of them, may be attained, shall be as prescribed in this Chapter, and not otherwise.

133. An applicant for the Ranks of Knighthood must possess the following qualifications:

(a) He must be a white male.

(b) He must be of good moral character.

(c) He must be not less than twenty-one and not more than fifty years of age, except that a person more than fifty years of age may become eligible by dispensation.

(d) He must be a believer in a Supreme Being.

(e) He must be in good health, and sound in body and mind, except that a maimed person may become eligible by dispensation.

(f) He must be able to read and write.

(g) He must not be engaged in either of the occupations
209 known as professional gambler, saloon keeper, bartender, or retail dealer in spirituous liquors, wine, ale, or beer, except as a bona fide hotel keeper or druggist.

(h) He must believe in the maintenance of order and the upholding of constituted authority in the government in which he lives.

(l) He must not have been rejected by any Subordinate Lodge as an applicant for the Ranks of Knighthood within six months preceeding his application.

134. Any person eligible under the provisions of the preceding section may make application for the Ranks of Knighthood to any subordinate lodge within whose territorial jurisdiction he has his actual residence; provided, that he shall have resided in this Domain for the preceding six months.

135. The application shall state the age, race, residence and occupation of the applicant, and shall aver that he is in all respects eligible to admission under the provisions of the Supreme Law, and shall be in form as follows: (Form follows);

136. Such application should be signed in the applicant's own handwriting and endorsed by two members of the lodge in good standing who have attained the Rank of Knight, and must be accompanied by the prescribed fee. If the lodge so requires, such application must be accompanied by the certificate of a physician,
approved by the Lodge, as to the health of the applicant, in
210 which case the fee for the medical examination shall be paid by the applicant in addition to the Rank fee. Except as provided in this and the preceding sections of this chapter, no applications for the Ranks of Knighthood shall be received or considered by a Lodge of the Order in this Domain.

160. A Page, Esquire, or Knight, shall be considered in good standing in the Subordinate Lodge in which he is a member:

a) If he is not under suspension for non-payment of arrearages or for other cause.

(b) If he has not renounced the Order.

161. A Past Chancellor upon whom has been conferred the Grand

Lodge Rank shall be considered to be in good standing in this Grand Lodge:

(a) If he is in good standing in the Subordinate Lodge in this Domain of which he is a member.

(b) If he is not under suspension from membership in this Grand Lodge, and

(c) If the Subordinate Lodge of which he is a member shall not be under suspension from any cause.

189. Each Subordinate Lodge in this Grand Domain shall pay a funeral benefit or not less than twenty dollars, upon the death of any member thereof, of any Rank, who was in good standing at the time of his death, said payment to be made as provided in the

211 By-laws of the lodge.

200. Whenever twenty or more persons eligible under the Supreme Law to receive the Ranks of Knighthood, shall desire to establish a Subordinate Lodge of the Order within the Domain of this Grand Lodge, they may petition the Grand Chancellor for a Warrant. Such petition shall be signed by each petitioner in his own handwriting giving his age, residence and occupation, and shall be in the form prescribed by the Supreme Lodge.

203. Charters shall be issued by the Grand Lodge to Subordinate Lodges which have been in existence as Warrant Lodges previous to the annual convention, which have fully conformed to the laws of the Grand Lodge and the usages of the Order.

219. The receipts from dues and fees and the increase thereof shall constitute a trust fund for carrying out the fraternal and beneficial features of the Order, and shall not be expended for any other than those purposes and the payment of the necessary expenses of the Lodge. This fund shall not be subject to parties among the members of a Lodge; and in a case a lodge shall, from any cause, cease to exist, said fund shall revert to this Grand Lodge.

220. Subordinate Lodges may by By-Laws establish a fund, separate from the General Fund to be known and designated as a special Fund.

(Sections 221 to 290 are immaterial herein.)

212 291. The Order of Knights of Pythias having been instituted and established on the 19th day of February, 1864, the Pythian Period dates therefrom.

(Sections 292 to 325 are not material herein.)

Printed in the appendix of said volume containing the Constitution and Statutes of the plaintiff Grand Lodge Knights of Pythias from which the foregoing extracts are taken, in the "Declaration of Principles" of the Order, identical in language with the Declaration of Principles published with the Constitution and Statutes of the Supreme Lodge Knights of Pythias, a copy of which is hereinbefore set out.

A volume published by the plaintiff Grand Lodge Knights of Pythias of Georgia, of which the following is the title page, said title page being duplicated in print on the front cover of said volume, to-wit: "Journal of Proceedings of the Grand Lodge of Georgia, Knights of Pythias, from its organization, March 1871, up to and

including the Seventh Regular Session held in Macon, Ga., July, 1876. Macon, Georgia, J. W. Burke & Co. Printers and Binders, 1877." Printed on the front cover and on the title page of said volume along with the foregoing quotation is the impress of a court of arms or signet identical in design with a coat of arms or signet hereinbefore appearing on the cover of the report of the Board of Control on page 37 of this bill of exceptions. Of said publi-
213 cation the following extracts are material herein:

Proceedings of the Grand Lodge Knights of Pythias.

First Session—First Day.

SAVANNAH, GA., *March 20th,* 1871.

In accordance with previous notice given to the Subordinate Lodges of the Order of Knights of Pythias, in the State of Georgia, by C. M. Barton, Supreme Recording and Corresponding Scribe of the Supreme Lodge of the World, the Past Chancellors of the State of Georgia met in the city of Savannah this day, at three o'clock p. m. for the purpose of organizing the Grand Lodge of the State of Georgia, Supreme Chancellor of the World, Samuel Read, presiding.

The credentials of the following Past Chancellors were presented:

From Forrest City Lodge, No. 1, of Savannah, T. A. Divis, John Lord, W. H. Bourne, J. P. A. Metz, W. V. Sarvis, S. C. Roberts, and Robert A. Williams.

From Viligant Lodge No. 2, Augusta, Edward H. Pughe, Wm. J. Goodrich and Henry Edmonston.

From Central City Lodge, No. 3, Macon, D. B. Woodruff, C. J. Stroberg, and P. T. Bartrum.

From Friendship Lodge No. 4, Savannah, George C. Lewis, D. Weisbein and L. J. Gazan.

From Satilla Lodge, No. 5, Jesup, W. C. Remshart.

From Myrtle Lodge, No. 6, Savannah, William H. Turner, Frank P. Brown, John H. Cavanaugh and A. M. Postly.

214 The Supreme Chancellor of the Supreme Lodge of the World, Samuel Read, approved of the credentials of the above named Past Chancellors and obligated them as members of the Grand Lodge of the State of Georgia.

The Grand Lodge then proceeded to ballot for each officer separately, which resulted in the election of the following officers:

Grand Venerable Patriarch, W. H. Bourne of No. 1.

Grand Chancellor, D. B. Woodruff, of No. 3.

Vice Grand Chancellor, W. J. Goodrich, of No. 2.

Grand Recording & Corresponding Scribe, C. J. Stroberg, No. 3.

Grand Banker, W. C. Remshart, of No. 5.

Grand Guide, George C. Lewis, of No. 4.

Grand I. Steward, F. P. Brown, of No. 6.

Grand O. Steward, W. V. Sarvis, of No. 1.

The officers were then installed into their respective offices by the Supreme Chancellor, who also read and delivered the Charter of this Grand Lodge to the Grand officers.

Evening Session.

The following Constitution was then adopted:

Article I.

This body shall be known as the Grand Lodge of Knights of Pythias of the State of Georgia.

Article II. Composition.

It shall be composed of all Past Chancellors of Subordinate Lodges in the State.

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Article III. Jurisdiction.

This Grand Lodge shall have jurisdiction over all Lodges of Knights of Pythias within the State of Georgia. It possesses the right and power of granting charters, of suspending or taking away the same upon proper cause, of receiving and hearing all appeals; of redressing grievances and complaints arising in the Lodges under its jurisdiction; of enacting by-laws for its government and support, provided the same are not in violation of the laws of the Supreme Lodge. (The balance of the Constitution is not material herein.)

The said Volume contained minutes of the proceedings of the Grand Lodge Knights of Pythias of Georgia at the annual sessions of said Grand Lodge held in the cities of Savannah, Atlanta, Athens, and Macon, Ga., from 1871 to 1876 inclusive, as stated in the title page above, with the laws enacted for its government and the changes therein from time to time.

A volume published by authority of the plaintiff Grand Lodge Knights of Pythias of Georgia, entitled, as appears on the front cover and title page as follows—"Official Record and Proceedings of the Grand Lodge of Georgia. Thirty-seventh Annual Convention held at Augusta, Georgia, May 15th and 16th, 1906. Pythian Period XLIII." Printed on the title page of said volume, along with the foregoing quotation is the impress of a coat of arms or signet identical in design with a coat of arms or signet hereinbefore appearing on the cover of the Report of the Board of Control on page 52
216 of this brief of evidence. The following extracts from said volume are all that are material herein:

Augusta, Ga., *May* 15, 1906.

The Grand Lodge Knights of Pythias of Georgia convened in Thirty-seventh Annual Convention in Miller-Walker Hall in the City of Augusta, at 9 o'clock a. m., and was called to order by Grand Chancellor W. H. Brannon.

The number of subordinate Lodges December 31st, 1905, 182; number of members December 31st, 1905, 12043, the membership in each Rank of the Order being as follows: Past Supreme Chancellor 1; Past Grand Chancellor- 16; Past Chancellor- 1,987; Knights

9,758; Esquires 133; pages 14[illegible]. Number of subordinate Lodges May 12th, 1906, 197; membership reported May 1st, 1906, 12,829.

Financial Condition of Subordinate Lodges.

Cash on hand December 31st, 1904	28,959.90
Receipts during the year	78,066.03
Total	107,025.93

Disbursements.

For sick benefits	8,287.47
Funeral benefits	5,294.74
Other relief	2,901.61
Total paid for relief	16,483.82
Current expenses	43,027.30
Paraphernalia and supplies	8,160.61
Invested	5,335.25
Cash on hand Dec. 31, 1905	53,018.95
Total	107,025.93

217 Assets of Subordinate Lodges.

Cash on hand Dec. 31, 1905, (M. of E. and Trustees)	47,870.39
Investments (Stock, Bonds, etc.)	48,446.80
Real Estate	18,168.62
Paraphernalia, furniture, etc	45,833.27
Total assets	$160,319 08

Grand Lodge Finances.

Cash on hand Dec. 31, 1904	4,192.43
Receipts	11,104.75
Total	15,297.18
Disbursements	10,060.57
Cash on hand Dec. 31, 1905	5,236.61
Total	15,297.18

Officers elected for the ensuing year: T. H. Nickerson, Grand Chancellor; D. J. Bailey, Grand Vice Chancellor, John P. Ross, Grand Prelate; Wm. H. Leopold, Grand Keeper of Records & Seal; Clifford Walker, Grand Master at Arms; E. D. Brantley, Grand Inner Guard; George T. Gann, Grand Outer Guard.

Journal of Grand Lodge Session of 1907 was also introduced by

Plaintiffs, showing data on subjects copied above from the Journal of the 37th session.

The following is a substantial copy of the envelope and letter referred to in the testimony of Mr. Burns on page 4 of this brief:

Envelope addressed to:

"Chancellor Commander,
Capital City Lodge K. of P.
Atlanta,
Ga."

218 Letter addressed to:

"Chancellor Commander, Capital City Lodge K. of P., Altanta, Ga.

DEAR SIR AND BRO.: Our Lodge Knights of Pythias, has a member of our order in the Elkin Goldsmith Sanitarium to have an operation performed.

As Chancellor Commander, of Saluda Lodge No. 70 I will appreciate it very much for any courtesies shown him, and to give him any attention that he may need, and communicate with us by phone or telegraph, if the occasion demands. Any attention shown him by your lodge, or any member of your lodge will be appreciated in that Knightly spirit, which, is known to all.

Your Brother Knights,

J. R. CALLAHAN, *C. C.* Over."

P. S.—The name of the brother in the Sanitarium is R. E. Clinkscales.

J. R. C.

Two or three words in the lower left hand corner of the letter above copied have been torn out and cannot be reproduced, but the above is a substantial copy of the same.

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MAY 26, 1908.

CHARLES D. CRESWELL, (c), sworn for the defendant.

Direct examination by Mr. PETTIGREW:

My name is Charles D. Creswell. I am one of the defendants in this case. I belong to the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia. I hold the office of Grand Chancellor. I am serving my eighth term now. I have been a member of the order about 17 years. Most all of my offices have been in the subordinate lodges. I do not hold any office in the Grand Lodge. I have not held any office in the Supreme Lodge, any more than being a representative; I have acted as a delegate to the Supreme Lodge. I am in part familiar with the history, origin, constitution, laws, practices, and work of this order. I mean by saying in part that I can only give the history of it in this State. I am familiar with the operation and work of it in other States. I got that information by attending the

Supreme Lodge and reading the minutes. Under this name of North America, South America, Europe, Africa, Asia and Australia, as to what races we include in our organization, we include all of the brown races, and the yellow races, everything except the Caucasian race. We have members of other races besides the negro race. We have Chinese and Japanese. We have an order in Japan, an order in China and in the Hawaiian Islands. The Grand Lodge of Georgia
was organized under a charter by the Supreme Lodge. The
220 organization in this State was along in December 1890. The
organization has been continuous since then. As to whether the organizations in the foreign countries have been continuous—I can only state by the representatives of the Supreme Lodge Session stating that they had. The Supreme Lodge has organized Branch organization in at least 25 or more States of the United States. The first Lodge was organized in Mississippi. I could not tell you exactly that date that was. That organization had been kept going all the time. As to how the organization worked in carrying out the principles as laid down in the charter—only good moral citizens can join the order. We select the very best men in the community for the order, who will exemplify the principles of the order. We bury the dead, take care of the sick, relieve the widows and orphans, and the distressed, those in distress. We have signs and pass words in the order. The signs and pass words are the only secrets we have. We applied for a charter that would give us protection in carrying out the objects and purposes of our order. We take male members into the order from the age of 19 to 45. We try to teach them to be law abiding citizens, of good moral character. We also have sick benefits, furnishing a certain amount of money during sickness, and in the event of death, we bury them. And in the event of the death of a member we pay the widow and orphans so much money. That is what we call the endowment department. We have an endowment bureau. In round numbers we have about 300,000 members. As to the amount of money collected and paid out in this
branch, I can only give the figures for the past year, that is
221 from July first, 1906, to July 1, 1907. It amounts to
$554,424.41. As to how much has been paid out in the jurisdiction of Georgia—I can give you the total amount for seven years collected in the State and paid out in the State. Collected in this State alone $180,232.61. We have paid out to the widows and orphans $148,680.00. Yes, we take charge of all the widows and orphans of our association. I am Chairman of that board. We pay them from one, two and three hundred dollars within thirty days after the death of a member. As to any other charity except the widows and orphans—no more than taking care of the sick. We are averaging now in Georgia alone $51,000 a year for that. That does not include burying the dead. We pay out $9,000 a year for that. The figures I have given do not include the insurance feature. We take up insurance under the endowment bureau. I could not tell you the amount of insurance there is outstanding in that bureau in the United States. There is outstanding in this State about $33,000. We have no other charitable money we pay out that way. It is impossible for a white man to get into our order. I say it is

impossible, because we have turned them down. As to whether there has been any application made by white people to get into the order—we couldn't say we have had any known white men, we have had men where it was doubtful about the race. As to having any one who was unquestionably a white man to apply to the order,—not directly that I know of. I know of no confusion about mistaking one order for the other, none whatever. As to having done anything since we have been organized to my knowledge
222 to palm off our order as that of the white order—none sir. No, we have never used any name to hold out to the public the name Knights of Pythias, without using this other name, North America, South America, Europe, Asia, Africa and Australia, as all our literature will show that. These words North America, South America, Europe, Asia, Africa, and Australia, were used to distinguish from the Knights of Pythias of the world. We do not in our charter undertake to do any help to the white race, none whatever. No charity is done by the white Knights of Pythias to my race, none whatever that I know of. No, I have never done anything to conceal the fact that our order belonged to a different race from the white race. As to the uniforms and where we get them—they are on the Commercial market. Any one can buy them. You don't have to be a member of the order. These emblems and flags are on the commercial market. Anybody can buy them from the factory. There are a dozen factories. You can buy them right here in Atlanta. You can buy the jewelry in the pawn shops or anywhere else. The only part of our order that is secret is the signs and pass words. They are issued from the Supreme Lodge. The headquarters of the Supreme Lodge are at Charlestown, W. Va. I do not know any of the secret signs of the white Knights of Pythias, not that I know of. I do not know of any attempt on the part of my order to get any of those secret signs. As far as the ritual is concerned, you can buy the rituals most anywhere. You can buy them from Sears-Roebuck & Co., Chicago, for 60 cents. They
223 advertise them. You can't buy them in the book stores. You do not have to be a Knight of Pythias to buy them, anybody can buy them. There is nothing else I want to state.

Cross-examination:

The amount that has been paid out is $554,424.41 for one year in the entire order. I did not say that was in Georgia alone. That was for one year, from July 1906 to July, 1907. I got these figures from the Supreme Lodge Minutes. I have a copy of the Minutes of the Supreme Lodge here. These figures are shown on page 102. The amount of insurance in force in Georgia is right there in that book, if you will look it up. The amount of insurance outstanding in Georgia is about $33,000, I think. I don't know how much was paid out in Georgia for the past year, but for the past seven years $148,680. I get $1500 salary. No, we won't let white men join our order. As to whether our laws forbid a white man from joining it—we don't strictly forbid a white man from joining it. Yes, I am familiar with the laws of the order. Male persons are eligible from 19 to 45 years of age, of good moral character,

sound in body and in health, that believe in a Supreme Being. Yes, he must be a male person. No, it don't effect race, nationality or anything of that sort. I said you could buy rituals from Sears, Roebuck & Co., and Montgomery-Ward & Co., you can buy Knights of Pythias rituals. As to whether they are the rituals of the
224 order of the plaintiff in this case—I could not say. I have seen them, but I never bought one. I have seen them advertised, seen them advertise the literature. They did not send the advertisement to me as Grand Chancellor; they just sent that to me as C. D. Creswell, Macon, Ga. I was not a member of the Supreme Lodge when it was organized. I have only been a member of the Supreme Lodge about 8 years. No, I don't know that my order got hold of an old ritual of the Knights of Pythias, and copied it. No, I don't know that that is the general reputation and history in my order of the Grand Lodge. No, I don't know that my order copied the Constitution of the Plaintiff's order, because I never seen the Constitution of the Supreme Lodge of the whites, nor the Grand Lodge either, no sir. No, I never compared them. Yes, I heard them read and compared in the hearing of this case before. I don't know that they are alike. I know there are some words that are similar, but say word for word I don't know that. No, I don't know that members of my order claim to be members of the same order as the white Knights of Pythias. I deny that. No, I don't know that in order to induce negroes to join our order we tell them that we have the same signs and pass words and secrets as the white order, that is denied. No, I don't know that we tell them it is the same order, that is denied. No, I don't know that we tell them it was founded by Justus H. Rathbone, founder of the white order. That is printed in a book, and anybody can buy a history of the order. No, I don't know that the order was
225 founded by Justus H. Rathbone in 1864; you all claim it was founded by Justus H. Rathbone. A portion of our race made application but were denied admission, as set forth in our petition. The Knights of Pythias rituals are on the commercial market; any man can buy them that wants to. You don't have to be a Knights of Pythias to buy a ritual. I have received literature to that effect. Yes, the literature spoke of other secret order literature that could be bought. I did not pay any attention to that, I was not interested in those. That was not what I was making my bread out of. I was not interested in any other. I don't remember any other order except the Knights of Pythias. As to whether any of the lapels, buttons, signs or any other jewelry, worn by members of our order has anything on it to indicate North America, South America, Europe, Asia, Africa and Australia—no, for the simple reason we have never got out any patents, or copy right for that. We can buy jewelry in the pawn shops. As to whether any of our regalia, insignia or buttons have these words affixed to them—not that I know of. Yes, I have a Knights of Pythias ring in my pocket. Here it is. There is nothing on it about North America, South America, Europe, Asia, Africa and Australia. Our literature has that on it. As to whether our emblems are just ex-

actly like the emblems of the white folks Knights of Pythias, I could not say that. I have never seen any of our emblems with those affixed on them. No, I don't order Knights of Pythias emblems with North America, South America, etc., on them.
226 I don't know that our emblems are identical in all respects with the emblems of the white people. Yes, I have been the highest officer in this State there is in our order. Yes, I am at the head of the Insurance department, and the uniform department. I am Chairman of the endowment bureau. As to whether I have observed that our emblems are the same in shape, size, color and design, identical in all respects with the white peoples' emblems—I have not been in the white peoples' lodge. As to what I see on the streets, as far as I know, they are identical, what you see on the streets. As to the emblems worn in public—there is no difference in them as far as I know. I never seen any copyright of them. As to this clipping purporting to come from the Savannah Georgia Advocate of July 28, 1906,—I suppose I read that in the paper if it was published, I could not say positively that I did. Yes, that has reference to our order. As to this clipping from the Brunswick Herald, of Saturday, June 16, 1906—I don't remember seeing that. As to this clipping from the Augusta Baptist about the K. of P. Chancellor—part of that has reference to our order. John McIntosh of Savannah, is not a member of our order now, he used to be. I can't say that I read this in the Georgia Advocate. I can't say that I read every piece about that. As to knowing that when I furnished news to the newspaper for publication with reference to our order of the Knights of Pythias of Georgia, I never said anything about North America, South America, etc.,—I have to deny that sir.
227 As to how long I have had in my possession this pamphlet of the minutes, Constitution, laws, etc.—I guess I got it a short time after I came to be a member of the order. I found it in the desk with the old records of the order. As to whether members of my order seek to introduce themselves to the members of the white men's order as fellow Knights, without saying anything about North America, South America, or any other continent or Island of the Sea—no, sir, we deny that. No, I never tried to so introduce myself and no man can stand up and say it and tell the truth. As to whether I have heard of this before—I may have heard some white men saying it—I never heard it from any black man; I heard of it here yesterday. No, it is not true that one of the reasons we urge negroes to join our order is because it is part and parcel of the white folks' order, or that it is just like the white folks' order. I will say here, if your honor please, that we do not teach social equality in our order.

Redirect examination:

My order did not have anything to do with the publication of these things that Judge Ross handed to me, not that I know of. The department of our Order called the Calenthia, is the female department for our wives, mothers, sisters, and daughters. It is to take care of the sick and bury the dead. This branch of the order

does take care of the sick and bury the dead in the State of Georgia. This order extends to other States besides Georgia, that branch of the order.

228 JOHNSON MATTHEWS (c.), sworn for the defendant:

I am a member of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia. I have been a member about 12 years. I am a member of the same Order. Jurisdiction of Georgia. For several years I was Grand Keeper of the Records and Seals. I am now Auditor of the Knights of Pythias. Grand Keeper of the Records and Seals is a department of the Grand Lodge. I have nothing to do with the Supreme Lodge in any capacity, none whatever. My jurisdiction is in the State of Georgia alone.

Oral testimony closed.

229 *Documentary Evidence Introduced by Defendants.*

Certified copy of certificate of incorporation from the office of the Recorder of Deeds, District of Columbia, recorded October 10, 1889, (the copy signatures and seals and affidavits of incorporators, and certificate of Recorder of Deeds being herein omitted) as follows:

"The Supreme Knights of Pythias North and South America, Europe, Asia and Africa." Certificate of incorporation. Recorded Oct. 10, 1889, 1-10 P. M.

This is to certify that the subscribers, being persons of full age, all of whom are citizens of the United States and a majority of them being citizens of the District of Columbia, pursuant to, and in conformity with Sections Five Hundred and forty-five (545) Five Hundred and forty-six (546) Five Hundred and forty-seven (547) Five Hundred and forty-eight (548) Five Hundred and forty-nine (549) Five Hundred and fifty (550) Five Hundred and fifty-one (551) and Five Hundred and fifty-two (552) of the Revised Statutes of the United States relating to the District of Columbia, do hereby associate themselves for the purposes set forth in the following articles, and are desirous of acquiring and enjoying the powers and immunities of a corporation or body politic in law, for the furtherance of such purposes.

230 The subscribers do, therefore, on this, the Tenth day of October A. D. 1889, hereby associate themselves for the objects and under the articles, conditions and name specified in the following articles:

Article 1.

This corporation shall be known by the name of "The Supreme Lodge Knights of Pythias North and South America, Europe, Asia and Africa," and shall have full power and authority to make, have and use a common seal with such device and inscription as they may deem proper, and the same to break, alter

and renew at their pleasure: and by the name, style and title aforesaid, shall be able and capable in law to sue and be sued, plead and be impleaded in any Court or Courts, before any Judge or Judges, Justice or Justices in all manner of suits, complaints, pleas, causes, matters and demands whatsoever, and all and every matter or thing therein to do in as full and effectual a manner as any other person or persons, bodies corporate and politic within the District of Columbia, and elsewhere where power and authority are conferred by the General Incorporation Act of May 5, 1870, may or can do: and to make or adopt rules—by laws—and ordinances, and to do everything needful for the good government and support of the affairs of the said Corporation.

And the managers and their successors shall be able and capable in law to take and receive, hold and enjoy all, and all manner of lands, tenements, rents, annuities, franchises, and hereditaments, and any sum or sums of money, and any manner and portion of goods and chattels given and bequeathed to them, to be employed and disposed of according to the objects, articles and conditions hereof, or according to the articles and by-laws of this corporation, or according to the will and intention of the donors subject only to the limitations and restrictions, objects, purposes and purview of this charter.

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Article 2.

The term for which this incorporation is organized to continue and endure, is twenty years, to wit, the term beginning with the date of these presents.

Article 3.

The object of this association is to promote the principles of Friendship, Fraternity, Benevolence and Charity; to uplift the fallen; to soften the asperities of life; to subdue party spirit; to destroy caste or color prejudices; to relieve the needs and afford succor to a brother; to elevate man to a higher plane of intelligence, morality and social equality; to minister to the sick and suffering; to bury the dead; and to provide mutual relief to its members and endowments for their widows and orphans by means of levying an assessment, annually or oftener upon its members, of Three Dollars ($3.00/100) or more.

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Article 4.

In addition to the powers granted by law, the Corporation hereby erected by the subscribers under the name, style and title aforesaid, shall have the exclusive right, power and authority to establish Grand and Subordinate Lodges of the Knights of Pythias of North and South America, Europe, Asia and Africa, and Grand and Subordinate Courts of Calanthe; Grand and Subordinate Divisions etc., as may be provided by the constitution and by-laws of this Corporation, which shall be constituted, chartered, regulated and controlled by "The Supreme Lodges Knights of Pythias of North and

South America, Europe, Asia and Africa," said Grand and Subordinate Lodges, Grand and Subordinate Courts of Calanthe, Grand and Subordinate Divisions, etc., shall be chartered and erected by the said "The Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa," at such time and places and in such manner and form as may be provided by the constitution and by-laws of said corporation hereby erected, or by a majority vote of a quorum of its members as provided in its constitution, or by-laws or by a majority vote of a quorum of its Board of Managers as determined by the by-laws and constitution of the aforesaid corporation.

Article 5.

The management of this Corporation shall be vested in a Board composed of twelve (12) managers, and for the first year of
233 its existence, to wit, the year beginning with the date of these presents,—the following named officers shall constitute the Board of Managers, viz:—Elias A. Williams, M. D., Supreme Chancellor; Leonidas H. Wilson, Supreme Vice-Chancellor; Thomas W. Stringer, Supreme Post Chancellor; Israel Derrick, Supreme Prelate; George E. Jones, Supreme Master of Exchequer; Robert L. Reed, Supreme Keeper Records and Seals; Obediah M. Wood, Supreme Lecturer; James B. Gabe, Supreme Master at Arms; Spencer R. Riley, Supreme Inner-Guard; Benjamin A. Mason, Supreme Outer-Guard; Rudolph B. Baguie, General and Worthy Chancellor; M. A. Williams, Worthy Register of Deeds; the successors to the above named Board of Managers shall be selected annually at such time and place as a majority of the Representatives may decide.

In testimony whereof, We have hereunto set our hands this the Tenth day of October, A. D., 1889.

Also Certificate of Reincorporation, as follows:

The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia.

Article 1.

A. This body politic and corporate shall be known in law by the name of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia.

B. This corporation and its successors shall have full
234 power and authority to make, have and use a common seal, with such device and inscription as it may deem proper, and the same to alter and change at their pleasure, by the name and title afore-said, shall be able and capable in law and chancery to sue, and be sued, plead and be impleaded, in any Court or Courts, before any Judge or Judges, Justice or Justices, in all *manner* of suits, complaints, pleas, causes, matters and demands whatsoever, and all and every matter or thing therein to do in as full and as effectual a manner as any other person or persons, bodies politic or corporate, within the District of Columbia and elsewhere, where power and authority are conferred by the General Incorporation Act, May 5th, 1870, and amendments thereto, may or can make

and adopt a Constitution, By-laws and Ordinances, and to do anything needful for the good government and support of the affairs of the said corporation.

C. The managers and their successors shall be able and capable in law to take, receive, hold and enjoy in all manner, land, tenements, rents, annuities, franchises and hereditaments, any sum and sums of money, and any manner and portion of goods and chattels given and bequeathed to them; to be employed, used or disposed of according to the objects, articles and conditions thereof, according to the Articles, Constitution, By-laws and Ordinances of this corporation, or according to the will and intention of the donors, subject only to the limitations and restrictions, objects, purposes, and purview of this charter.

235 D. This corporation, as aforesaid, is the successor of and is reincorporated instead of the corporation known heretofore as the Supreme Lodge Knights of Pythias of North America, South America, Europe, Asia and Africa, filed of record the 10th day of October, A. D. 1889, and recorded in Liber 5, Vol. 38, in the Recorder of Deeds office in the County of Washington and District of Columbia.

Article 2.

The period for which this corporation is organized to continue and endure is, to wit; the term beginning with the date of these presents, and at the pleasure of this corporation or their successors.

Article 3.

The particular business and objects of this body politic and corporate, is to promote the principles of Friendship, Charity, Benevolence, Honor, Justice, Loyality, Fidelity, Harmony and Love; to uplift the fallen, to soften the asperities of life, to subdue party spirit, to destroy caste and prejudice, to relieve the needs and afford succor to a brother, to elevate man to a higher plane of intelligence, morality and social equality, to administer to the sick and suffering, to bury the dead, to provide mutual relief to its members, an endowment for their widows, orphans of the members, by purchasing or receiving land or lands, or the erecting or purchasing of a building or buildings, sanitarium or sanitariums. For

236 the use of this body politic and corporate to receive or purchase land or lands, temple or temples to be used, employed or disposed of for the purposes as provided for by the laws of the corporation, or by any other means that may be necessary to the furtherance of the principles as are herein stated.

Article 4.

A. In addition to the powers granted by law this corporation hereby created by the subscribers under the name, style and title aforesaid, to-wit: The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia shall have the exclusive right, and authority to continue the existence of the Supreme

Lodge, as is now constituted and created by representation from the subordinate body or bodies that are designated by the Constitution, By-Laws and Ordinances as or may be adopted by the body.

B. The said Supreme Lodge is to be the source of all authority in this body politic and corporate, and shall have the exclusive right, power and authority to establish and create Grand and Subordinate Lodges; a Supreme Court; Grand and Subordinate Courts of Calanthe; Brigardes, Regiments and Companies of the Uniform Rank Department, and Endowment Department or departments wherever they deem fit and proper, and as may be provided by the Constitution, By-laws and Ordinances of this corporation, and which shall be constituted and chartered, regulated and controlled by
237 The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, at such time and place and in such manner and form as may be provided by the constitution and by-laws of said corporation, or by a majority vote of a quorum of its members as may be provided for in its Constitution or By-laws, or by a majority vote of a quorum of its Board of Managers as determined by the Constitution and By-laws of the aforesaid corporation.

Article 5.

A. The management of this corporation shall be vested in a Board of Management composed of thirteen managers hereinafter named and their successors, the year beginning with the date of these presents, and the said managers may legally act in the interim after the expiration of the ending of the year until August, A. D. 1905, when the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, a convention of the Supreme Lodge thereof, as is now constituted, shall meet in the city of Pittsburg, County of Alleghany, State of Pennsylvania, and elect their officers who are herein designated as the Board of Managers, and biennially thereafter.

B. The Board of Managers for the beginning of the term, and the date of the articles shall be, to-wit: Samuel W. Starks, Supreme Chancellor; Lewis M. Mitchell, Supreme Vice-Chancellor; James C. Boss, Past Supreme Chancellor; Chelsey D. White, Supreme
238 Prelate; Christopher J. Robinson, Supreme Keeper of Records and Seal; John H. Young, Supreme Master of Exchequer; David S. Miller, Supreme Master at Arms; Frank Brown, Jr., Supreme Inner Guard; Dennes Taylor, Supreme Outer Guard; John Mitchell, Jr., Supreme Lecturer; Robert F. Boyd, Supreme Medical Registrar; Samuel A. T. Watkins, Supreme Attorney; and Robert R. Jackson, Major General of the Uniform Rank. The successors of the above named Board of Managers shall be elected biennially thereafter, beginning this month of August, A. D. 1905, at such time and place as a majority of representatives of said convention may decide, according to the Constitution and By-laws that may be made and provided by said convention.

In testimony whereof, we have hereunto set our hands this, the 14th day of December, A. D. 1903, in the County of Washington and District of Columbia.

Also, Certificate of Organization, as follows:

The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia.

For the purpose of complying with chapter XVIII, sub-chapter XII, Insurance laws of the District of Columbia, relating to fraternal beneficial associations, it was necessary to follow strictly the provisions thereof, and in accordance, on the 26th day of May A. D. 1905, the following Certificate of Organization was caused to be filed by the Supreme Chancellor and Supreme Attorney.

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Article 1.

This fraternal association shall be known in law by the name of The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia.

Article 2.

The mode and manner in which the corporate powers granted by the aforesaid sub-chapter twelve (12) to be exercised are, and this association is organized and carried on, for the soul benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work, and representative form of government, making provisions for the payment of benefits in case of death, sickness, temporary or permanent disability, either as a result of disease, accident or old age, and as provided by a sub-chapter herein.

Article 3.

The following officers shall have and exercise the general control and management of the affairs of the association, namely; Samuel W. Starks, Supreme Chancellor; Lewis M. Mitchell, Supreme Vice-Chancellor; —— ——, Past Supreme Chancellor; Chelsey D. White, Supreme Prelate; Christopher K. Robinson, Supreme Keeper of Records and Seals; John H. Young, Supreme Master of Exchequer; David S. Miller, Supreme Master at Arms; Frank Brown, Jr., Supreme Inner Guard; Denniss Taylor, Supreme Outer Guard; John Mitchell, Jr., Supreme Lecturer; Robert F. Boyd, Supreme Medical Registrar; S. A. T. Watkins, Supreme Attorney, and Robert
240 R. Jackson, Major General of the Uniform Rank and their successors, as may be selected at the regular convention of the Supreme Lodge of said association or order, as provided by the laws of the same.

Article 4.

The place of doing business of this association shall be in the District of Columbia, and otherwise as the laws, rules or regulations of the Supreme Lodge of the association or order aforesaid shall otherwise determine.

Article 5.

The age of applicants for beneficial membership shall not exceed forty-five years; medical examinations shall be required for all applicants.

In testimony whereof we hereunto make, sign and acknowledge this certificate in writing and set our hands this the 24th day of May, A. D., 1905, in the County of Washington and District of Columbia.

Immediately following copies of the foregoing certificates of incorporation printed in a volume entitled Constitution and Supreme Statutes of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, introduced by the defendants, appears in print the following:

"The Supreme Lodge Knights of Pythias is a fraternal and benevolent society incorporated under the Act of Congress. On petition the society may have causes removed to the Federal Court.

241 United States Supreme Court in Withers vs. Supreme Lodge Knights of Pythias, 177 U. S., 260."

A copy of the laws of said Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, of which the defendants are members, the title page of which volume, introduced by the defendants, is as follows, the print being material to be incorporated herein, the said title page, with *court* of arms thereon inscribed being duplicate in print on the front cover of said volume with the addition "Revised and Amended A. D. 1905, to-wit:

Constitution and Supreme Statutes of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia.

Court-of-Arms of
Knights of Pythias.

Laws Relating to the Supreme, Grand and Subordinate Lodges and the Departments of the Order.

Revised and Amended, A. D. 1905.

242 The following extracts from said published laws are material to a clear understanding of the case at bar and the errors in this Bill of Exceptions complained of, to-wit:

Declarations of Principles.

Pythian Knighthood had its conception in the exemplifications of the life test of true friendship existing between Damon and Pythias.

Friendship, or mutual confidence, being the strongest bond
243 of union between man and man, and only existing where honor has an abiding place, is adopted as a foundation principle.

As the ideal King of the olden time was the personification of all the higher and nobler attributes of man's nature, the candidate for Knighthood had to prove himself worthy of acceptance by those who valued friendship, bravery, honor, justice and loyalty.

The order of the Knights of Pythias founded in Friendship,

Charity and Benevolence, which it proclaims as its cardinal principles, strives to gather into one mighty fraternity worthy men who appreciate the true meaning of friendship; who are cautious in word and act; who love truth; who are brave in defending right; whose honor is untarnished; whose sense of justice will prevent, to the best of their ability, a personal act or word injurious to the worthy; whose loyalty to principle, to family, to friends, to their country, and to the constituted authority under which they enjoy citizenship, is undoubted; and who at all times, are prepared to do unto others as they would that others should do unto them.

Supreme Constitution.

The Supreme Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, the source of all authority in the Order of the Knights of Pythias, doth ordain and establish this Supreme Constitution.

244 Article 1.—Supreme Law.

The rituals of the order, the Supreme Constitution, and the laws enacted by the Supreme Lodge in accordance herewith, shall be the Supreme Law of the Order of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia.

Article 2.—Composition of the Order.

The order of the Knights of Pythias is and shall be a secret, fraternal organization, composed of all persons upon whom any rank of the order shall have been legally conferred.

Article 3.—Structure of the Order.

SECTION 1. The order shall be constituted as follows:

1. Supreme Lodge.
2. Such Grand Lodges as possess legally granted charters which are not suspended or revoked.
3. Such subordinate lodges as possess legally granted charters which are not suspended or revoked.

SECTION 2. The departments of the order shall be the following and no others, namely:

1. The Endowment department.
2. The Ladies' department, to be known as the courts of Calanthe.
3. The military department, to be known as the Uniform Rank.

245 SECTION 3. To effect a change in the structure of the order as fixed by this article, this constitution must be amended.

Article 4.—Ranks of the Order.

SECTION 1. The ranks of the order shall be the following, and no others, namely:

1. The ranks of Knighthood known as Page, Esquire, and Knight, as established in the rituals of the order for subordinate lodges.

2. The Calanthe Rank to be obtained by the mothers, wives, widows, daughters and sisters of and the members of the order, in such manner as the Supreme Lodge may by law provide.

3. The Uniform Rank, which shall be attained only in accordance with the laws enacted for its government.

4. The Grand Lodge Rank, which shall be attained only by a Past Chancellor in good standing, and in such manner as the Supreme Lodge may by law provide.

5. The Supreme Lodge Rank, which shall be attained only by a Past Grand Chancellor in good standing, and in such manner as the Supreme Lodge may by law provide.

Article 5.—Honors of the Order.

SECTION 1. The honors of the order shall be the following, and no others:

1. Past Supreme Chancellor, which shall be attained upon the installation of his successor, by every Supreme Chancellor
246 who shall have served to the end of his official term.

2. Past Supreme Representatives, which shall be attained by every Past Grand Chancellor, who shall have served as Supreme Representative during at least one convention of the Supreme Lodge.

3. Past Grand Chancellor, which shall be attained upon the installation of his successor, by every Grand Chancellor, who shall have served to the end of his official term; and, at the institution of a new Grand Lodge, by the two members thereof who shall have been selected Supreme Representatives, and such other members who may have qualified themselves by complying with the requirements as set forth in the laws of the Supreme Lodge.

4. Past Grand Representatives, which shall be attained by every Past Chancellor who shall have served to the end of his official term; and at the institution of a new subordinate lodge, by the one member thereof who shall have been chosen by the lodge to receive that honor.

Article 6.—Supreme Government.

The Supreme Government shall consist of three independent, co-ordinate departments, namely:

A legislative department, a judicial department, and an executive department.

Article 7.—Legislative Department.

247 SECTION 1. The legislative powers of the Supreme Government shall be vested in a Supreme Lodge, which shall be composed of:

1. All Past Supreme Chancellors in good standing in their respective Grand and subordinate Lodges.

2. Its officers as designated in this constitution.
3. The Supreme Representatives legally elected or appointed.

SECTION 2. The officers of the Supreme Lodge shall be:
1. A Past Supreme Chancellor,
A Supreme Chancellor,
A Supreme Vice Chancellor,
A Supreme Prelate,
A Supreme Keeper of Records and Seals,
A Supreme Master of Exchequer,
A Supreme Master of Arms,
A Supreme Lecturer,
A Supreme Medical Registrar,
A Supreme Attorney,
A Supreme Inner Guard,
A Supreme Outer Guard,
A Major General of the Uniform Rank.

They shall be elected biennially, as provided by law, and shall hold office for the term of two official years, or until their successors are duly elected, installed and qualified.

248 2. The Supreme Chancellor and the Supreme Vice Chancellor shall be elected from among the Past Grand Chancellors who have received the Supreme Lodge Rank, and who are in good standing in their Grand and Subordinate Lodges, provided they have attended two regular conventions of the Supreme Lodge. The Major General of the Uniform Rank shall be a member in good standing in a company of the Uniform Rank and also in good standing in the Supreme, his Grand and Subordinate Lodges. The other officers may be elected from any members of the Supreme Lodge in good standing in their Grand and Subordinate Lodges.

SECTION 3. Supreme Representatives shall be elected by the Grand Lodges in the same manner as Grand Lodge Officers are elected, provided that, if under this constitution, a vacancy occur or a Grand Lodge become entitled to increased representation, and no regular convention of such Grand Lodge is to be held prior to the next regular convention of the Supreme Lodge, then and in such case, the vacancy may be filled, or such increased representation may be provided for by appointment, in such manner as the Grand Lodge may by law provide, or in the absence of law, by the Grand Chancellor's appointment of a member of his jurisdiction qualified to represent said Grand Lodge.

SECTION 4. The Representation of each Grand Lodge shall be as follows:

Two Supreme Representatives at Large until the membership of the order shall be One Thousand, and one additional Su-
249 preme Representative for each full Five Hundred members thereafter of such Grand Lodge on the first day of July, immediately preceding the election or appointment of such Supreme Representative, provided that no Grand Lodge shall be entitled to more than four Supreme Representatives.

SECTION 5. The term of a Supreme Representative shall be two years, provided that, where vacancies are filled, either by election or

appointment, such election or appointment shall be for the unexpired term.

SECTION 6. A Supreme Representative must be a Past Grand Chancellor in good standing in his Grand and Subordinate Lodges, within the jurisdiction wherein he resides, and remain all of such term an actual and bona fide resident thereof, and should a Supreme Representative become not in good standing in, or cease to be a member of his Grand Lodge or Subordinate Lodge within its jurisdiction, or, should he become other than and actual and bona fide resident of the jurisdiction of his Grand Lodge, then or in either of such cases, his rights as Supreme Representative shall cease and determine, and a vacancy shall be held to exist in such position.

SECTION 7. All Past Grand Chancellors in good standing in their respective Grand and Subordinate Lodges, who shall have received the Supreme Lodge Rank, shall be admitted to the conventions of the Supreme Lodge, and shall have all the privileges except voting.

SECTION 8. The regular conventions of the Supreme Lodge shall be held biennially at such time and place as may have been
250 designated at the previous regular convention, provided that, if the time and place were not designated, a convention shall be held in the city of Washington and District of Columbia the 4th Tuesday in August, in the succeeding unevenly numbered year; and provided also, that should any public calamity or imperative exigency so require, the Supreme Chancellor, by and with the consent of a majority of the officers of the Supreme Lodge, may designate a time and place where such convention may be held, the time being consistent with the provisions of this section.

SECTION 9. A quorum of the Supreme Lodge for the transaction of business, shall not be less than one Supreme Representative from each of the majority of the Grand Lodges; provided that Supreme Representatives from one third of the Grand Lodges may receive and act upon certificates and credentials, and a less number may meet and adjourn from day to day.

SECTION 10. The following powers are reserved to the Supreme Lodge, viz.:

1. To pass upon and determine all questions relative to the qualifications and elections of its members.

2. To enact laws for its government and protection, and prescribe rules for the conduct of its business.

3. To prescribe the powers and duties of its committees.

4. To prescribe the powers and duties of its officers, except
251 as they may be fixed by its rituals and the Supreme Constitution.

5. To provide by law a revenue for the Supreme Lodge government.

6. To make appropriations of money for the maintenance of the Supreme Lodge government.

7. To provide the installation and other non-ritualistic ceremonies of the order, and to regulate by law their preparation, promulgation and use.

8. To define offenses against the Order and against the Supreme Law, and to prescribe penalties therefor.

9. To grant charters to Grand Lodges, and to subordinate lodges not within the jurisdiction of a Grand Lodge, and to provide by law for the issue, revocation, suspension, restoration and reissuing of such charters.

10. To provide by law for the institution of Grand and subordinate lodges, a Supreme Court, Grand and Subordinate Courts of Calanthe, band formations of the Uniform Rank, department into infantry, cavalry or artillery, or all of them.

11. To enact such laws as shall secure the conformity to the Supreme Law of the constitution and laws of all Grand and subordinate lodges and all departments.

12. To require from subordinate lodges, not within the jurisdiction of the Grand Lodge, such reports as may be prescribed by law.

252 13. To require from any officer of the Grand or subordinate lodges, Courts of Calanthe, and other departments such reports, credentials or certificates as may be prescribed by law.

14. To establish subordinate lodges in territory not within the jurisdiction of a Grand Lodge, and to enact laws for their government.

15. To fix by law uniform conditions upon which the ranks of the order may be attained.

16. To prescribe by law the rights, benefits, privileges and duties pertaining to all ranks and honors of the order, so far as the same are not determined by the rituals of the order.

17. To prescribe by law the paraphernalia, emblems, jewels and insignia of the order, and in like manner to control and regulate their use.

18. To control and regulate by law the use of the name of the order or any name or term derived therefrom or germane thereto.

19. To provide and furnish all certificates of membership, ranks of honor and receipts for dues, and to regulate their use, and to prescribe and furnish such other supplies as may be designated by law.

20. To regulate by law the promulgation, obtainment and use of the pass-words of the order.

21. To prescribe by law what shall constitute good standing in the order.

253 22. To define by law the status of the members of the order under suspension for any cause, the control which may be exercised over such members, and the methods by which they may regain membership.

23. To provide by law for the transfer of severance of lodge membership.

24. To enact laws for the promotion of the general welfare of the Order.

25. To enact laws which shall be necessary to carry into execution all powers vested in the Supreme Lodge Government by the Supreme Constitution, or any amendment thereof.

26. To provide by law the manner of assessments for the institu-

tion and maintenance of suitable building or property for the conducting of the affairs of the Order.

SECTION 11. The Supreme Lodge may by law provide for the impeachment and removal from office, the suspension and expulsion of an officer or member of the Supreme Lodge or Supreme Court of Calanthe, and may define the offenses for which such proceedings or either of them will lie. In all cases, removal from office thereafter, or removal from and di-qualification to hold office thereafter, shall require the affirmative vote by yeas and nays of two thirds of all the members of the tribunal which shall have been established for the trial thereof; provided that conviction shall not preclude or prevent the trial of the party for the same offense in any other tribu-
254 nal of the order having jurisdiction, and further provided that the Supreme Chancellor shall have power to suspend officers of the Supreme Lodge or Supreme Court of Calanthe, for good and sufficient cause, which shall be stated fully, subject, however, to the action of the Supreme Lodge. This power shall be in the interim of the Supreme Lodge conventions. He may also fill the temporary vacancy.

SECTION 12. All laws enacted by the Supreme Lodge shall be of general application, shall be formulated as statutes and shall be styled "Supreme Statutes," and when introduced and while under consideration, shall be styled "propositions."

SECTION 13. A proposition shall not embrace more than one subject which shall be clearly expressed in its title.

SECTION 14. A proposition which provided for the repeal or amendment of a statute shall recite in its title, the title of the statute to be repealed or amended, and what parts thereof.

SECTION 15. The affirmative vote, by yeas and nays, of a majority of all the voting members of the Supreme Lodge shall be required for the final passage of a proposition.

SECTION 16. When a proposition shall have failed to pass, no proposition embracing the same subject shall be considered at the same convention of the Supreme Lodge, except by the unanimous consent of the Supreme Lodge.

SECTION 18. No moneys shall be drawn from the exchequer of the Supreme Lodge except as provided by law.

255 SECTION 19. A statement of all receipts and expenditures of the Supreme Government shall be reported by the proper officers to Supreme Lodge, and be included in the printed journal of each regular convention thereof.

SECTION 20. A journal of the proceedings of the Supreme Lodge shall be kept, and shall be read daily, and shall be prima facie evidence of all acts of the Supreme Lodge until the publication of the official record. Such official record shall be published in such manner as the Supreme Lodge may by law provide.

Article IX. Executive Department. Supreme Chancellor.

SECTION 1. The executive powers of the Supreme Lodge Government shall be vested in a Supreme Chancellor of the Knights of

Pythias and the Supreme Worthy Counsellor of the Order of Calanthe as hereinafter mentioned, and the other officers, as far as their duties are hereinafter defined who shall be elected, and shall hold their office as provided *at* this constitution.

SECTION 3. The Supreme Chancellor at the time of his election, shall be a member of the Supreme Lodge and in good standing in his Grand and Subordinate Lodges, and shall have attended two or more regular conventions of the Supreme Lodge as a Supreme Representative or Supreme Lodge Officer.

SECTION 4. The Supreme Chancellor shall be Commander-in-Chief of the Uniform Rank.

256 SECTION 5. In case of the removal from office of the Supreme Chancellor, or his death, resignation or inability to discharge the duties of said office, the duties shall devolve on the Supreme Vice Chancellor.

SECTION 7. The Supreme Chancellor shall enforce the Supreme law and the decrees.

SECTION 8. The Supreme Chancellor may require information in writing from any member of the order as to any matter within the knowledge of such member, pertaining to the welfare of the order or the observance of the Supreme Law.

SECTION 9. Except when otherwise provided by law, the Supreme Chancellor shall fill by appointment any vacancy in an office of the Supreme Lodge which may occur during its recess, or declare vacant any office where the proper bond is not filed according to law.

SECTION 10. The Supreme Chancellor may, as provided by law, appoint and commission Deputy Supreme Chancellors for such duties as he may delegate to them.

SECTION 11. The Supreme Chancellor, at each regular convention of the Supreme Lodge, shall present to it a report of all his official acts during its recess. His report shall contain information in regard to the state of the order, and such recommendation as he may deem necessary and expedient.

SECTION 12. The Supreme Chancellor may call special
257 conventions of the Supreme Lodge if requested by nine Supreme Lodge officers or three-fourths of the Supreme Representatives of the Supreme Lodge.

SECTION 13. The Supreme Chancellor, during the interim of the Supreme Lodge, shall have authority to grant, in the manner provided by law, charters for the institution of Grand Lodges, and for the institution of subordinate lodges not within the jurisdiction of a Grand Lodge; which shall be in force until suspended or revoked in the manner provided by law.

SECTION 14. The Supreme Chancellor shall have authority to grant such dispensations as the Supreme Lodge may authorize by law.

SECTION 15. The Supreme Chancellor shall require the execution and delivery to him of the bonds which may by law be required of the officers of the Supreme Lodge and Supreme Court of Calanthe, and he shall be the custodian of such bonds and the

charter of the Supreme Lodge, except his bond, of which the Supreme Keeper of Records and Seal shall be the custodian.

SECTION 16. The Supreme Chancellor shall select and promulgate in the manner provided by law, the pass-words of the Order, and may change the same when in his judgment it may be advisable.

SECTION 17. The Supreme Chancellor shall perform all other duties as may be provided by the Supreme Law.

SECTION 18. The Supreme Chancellor shall receive such compensation as the Supreme Lodge may provide by law.

258 Article 11. Grand Lodges.

SECTION 1. Grand Lodges shall not be instituted with less than five subordinate lodges, or with a membership not less than Three Hundred members.

SECTION 2. Grand Lodges shall be composed only of Past Chancellors who have attained the Grand Lodge Rank.

SECTION 3. The jurisdiction of Grand Lodges, except as otherwise stated in its charter, shall be the state, district, territory, or province in which the same is located.

SECTION 4. Grand Lodges shall not be instituted within the jurisdiction of another, nor shall any Grand Lodge be created by the consolidation of two or more Grand jurisdictions or parts thereof, except by the Supreme Lodge, upon the request or by the consent of the Grand Lodges involved. If an emergency exists, the Supreme Lodge may require such Grand Lodges' jurisdiction to consolidate.

SECTION 5. Grand Lodges shall exercise within their jurisdiction all power and authority not reserved to the Supreme Lodge Government by the Supreme Constitution.

SECTION 6. Grand Lodges shall provide an Endowment Department to which every member of the order shall belong, and shall have exclusive control of same when given the power to do so by the Supreme Lodge. The Supreme Lodge, however, reserves the right to control the same on good and sufficient causes.

259 SECTION 7. The Grand Lodge shall prescribe the powers and duties of its officers, except as they may be fixed by Supreme Law.

SECTION 8. The ritualistic officers of the Grand Lodge shall be as prescribed in the Grand Lodge ritual. The Constitutional officers of a Grand Lodge shall be as may be provided in its constitution.

SECTION 9. The term of a ritualistic of a Grand Lodge shall be one official year.

SECTION 10. Each Grand Lodge shall have a constitution for its own government, and shall provide such legislation as shall secure conformity to the Supreme Law from the Subordinate Lodges and members of the Order within its jurisdiction; but a Grand Lodge shall not enact or enforce any law which shall abridge the rights and privileges secured to members of the Order by the Supreme Law.

SECTION 11. Grand Lodges may create, by constitutional provis-

ion, four independent co-ordinate departments, to-wit: A legislative department, to be known as the Grand Lodge, in which shall be vested all legislative powers; a judicial department to be vested in officers of the Grand Lodge; and in various standing committees to matters referred to them, subject to the action of the Grand Lodge; and executive department, being the Grand Chancellor and other Grand Lodge officers, in whom shall be vested all executive powers; and the endowment department which shall manage and control the endowment department, subject to the provisions of section 6, Article 11, herein.

260 SECTION 12. Each Grand Lodge shall provide by law for the holding of one regular convention, and no more, in each calendar year.

SECTION 13. Each Grand Lodge shall display its charter at the station of the Grand Chancellor at some time during every convention.

SECTION 14. Each Grand Lodge shall provide by law that the subordinate lodges within its jurisdiction shall pay weekly and funeral benefits.

SECTION 15. The charter of a Grand Lodge may be suspended by the Supreme Lodge or the Supreme Chancellor, as may be provided by law.

SECTION 16. The suspension of a charter of a Grand Lodge may — terminated by the authority suspending the same, as may be provided by law.

SECTION 17. The charter of a Grand Lodge may be revoked only by the Supreme Lodge, as may be provided by law. The Supreme Chancellor, may, however, suspend such charter until the next convention of the Supreme Lodge, where exigencies require the same to be done.

SECTION 18. All powers not delegated to Grand Lodges are hereby reserved to the Supreme Lodge.

SECTION 19. The Constitution and laws of Grand and subordinate lodges, which may be in force at the date of the adoption
261 of this constitution, are hereby declared to be operative so far as they do not conflict with the Supreme Law as established by this Constitution.

Article 12. Subordinate Lodges.

SECTION 1. A subordinate lodge shall be instituted only as may be provided by the Supreme Law, and shall exist only by virtue of a charter issued in accordance herewith: it shall consist of not less than ten members, seven of whom shall constitute a quorum: it shall have and exercise subordinate Pythian authority, and have control over such territory as may be prescribed by law, subject to the laws established by the Supreme Lodge and by its Grand Lodge. Two or more subordinate lodges may be given concurrent territorial jurisdiction when located in the same city or town or other contiguous territory.

SECTION 2. The ritualistic officers of a subordinate lodge shall be as designated in the subordinate lodge ritual. They shall be nomi-

nated, elected and installed, and vacancies in office shall be filled as provided by Supreme Lodge Law. The official terms of such officers shall continue for six months, beginning January 1st and July 1st of each year, or until their successors are elected and installed. The Keeper of Records and Seal, Master of Finance and Master of Exchequer may be elected for a period of one year, beginning Januray 1st.

SECTION 3. Subordinate lodges may select or appoint such
262 trustees or other non-ritualistic officers as may be authorized by its Grand Lodge.

SECTION 4. Each subordinate lodge shall display its charter in the lodge room whenever in convention.

SECTION 5. No meeting for the transaction of business shall be held, and no excursion or entertainment shall be had by a subordinate lodge, on the first day of the week, commonly called Sunday, except by permission of the Grand or Supreme Chancellor.

SECTION 6. The ranks of Knighthood shall be attained and conferred only in accordance with the requirements of the Supreme Law. The conditions for eligibility to such ranks shall be uniform, and shall be fixed by the Supreme Statutes; provided always, that no person shall be initiated in the order unless he be of good moral character, between nineteen and fifty years of age and a believer in a Supreme Being; provided further, that the fees for the ranks of Knighthood shall not be less than eight dollars in the currency of the United States or its equivalent in the currency of the country in which the lodge is located, except by dispensation of the Grand or Supreme Chancellor and in no case shall the sum be less than five dollars to be received by the lodge.

SECTION 7. Membership in a subordinate lodge may be attained only as provided by the Supreme Law. Every person claiming the rights, benefits and privileges of the order must be a member of a subordinate lodge.

263 SECTION 8. Each subordinate lodge shall provide for and pay upon the death of a member in good standing, a funeral benefit of not less than Twenty Five Dollars.

SECTION 9. The charter of a subordinate lodge shall not be arrested, suspended, revoked, or restored, except in such manner as provided by Supreme Law.

Article 13. Endowment Department.

SECTION 1. The purpose of the Endowment Department shall be to provide indemnity for the families and relatives of deceased members of the Order.

SECTION 2. The Endowment Department of the Order within the jurisdiction of a Grand Lodge, shall be controlled exclusively by such Grand Lodges; provided, however, that each Grand Lodge shall have such department, and shall pay an indemnity of at least Fifty Dollars upon the death of a member in good standing. In territory not within the jurisdiction of a Grand Lodge, the Supreme Lodge shall control the collection and payment of Endowment moneys and

control the Endowment department, provided, however, it is optional with the Grand Lodge whether its Endowment department shall be controlled by itself or by the Supreme Lodge. For good and sufficient reasons the Supreme Lodge reserves the right to control the Endowment department of any Grand jurisdiction.

Article 14. Military Department.

SECTION 1. The purpose of the military branch shall be to
264 promote a military spirit among its members.

SECTION 2. The military branch of the Order shall be governed by such rituals and laws as the Supreme Lodge may enact or authorize; provided that membership in such military branch shall be restricted to members of the Order who have attained the rank of Knight and are in good standing in the subordinate lodge, but shall not be compulsory upon any member of the Order.

Article 16. Rituals.

SECTION 1. The rituals of the order shall be the existing printed secret ceremonies, obligations and secret work heretofore established for the Supreme Lodge, Grand Lodges, and subordinate lodges and for the military branch of the Order.

SECTION 2. Any amendment of the rituals of the Order may be proposed at the regular convention of the Supreme Lodge, and shall be considered, and may be adopted in accordance with the Supreme Statutes; provided that such amendment shall require for its adoption the affirmative vote, by yeas and nays, of four-fifths of all the members of the Supreme Lodge and after a full exemplification in the presence of the Supreme Lodge, of the change proposed by such amendment. No more than one amendment shall be allowed at one convention unless by the unanimous consent of the Supreme Lodge.

SECTION 3. The rituals of the Order as to the matter therein contained shall be the paramount law of the Order; but no change or amendment of the ritual shall be obnoxious to, or in conflict
265 with the Supreme Constitution, or any amendment thereof, nor shall any amendment of the Supreme Constitution be obnoxious to or in conflict with the paramount law as contained in the rituals.

SECTION 4. The promulgation, issue, custody and use of the rituals of the Order shall be as provided by the Supreme Statutes.

Article *XVII.* General Provisions.

SECTION 1. All constitutions, legislation and decisions of the Supreme Lodge and rulings of the Supreme Chancellor, in force prior to the adoption of this Constitution, are hereby repealed and annulled, except as in this article otherwise specifically provided or where they do not conflict with the same.

SECTION 2. The ranks of Past Supreme Chancellor, Past Supreme Representative, Past Grand Chancellor, Past Grand Representative and Past Chancellor, heretofore acquired, shall be known hereafter

as the honors of Past Supreme Chancellor, Past Supreme Representative, Past Grand Chancellor, Past Grand Representative and Past Chancellor.

SECTION 5. The laws heretofore enacted for the government of the Endowment department, and in force at the date of the adoption, and so far as they do not conflict with this Constitution, shall continue in force as the laws for the government of the Endowment department until superseded by statutes duly enacted.

SECTION 6. The laws heretofore enacted for the government of the Uniform Rank, and the rulings of the Supreme Chancellor,
266 relative thereto, in force at the date of the adoption, and so far as they do not conflict with this Constitution, shall continue in force as the laws for the government of the military department until superseded by statutes duly enacted.

SECTION 7. The laws of any Grand or subordinate lodge which conflict with or contravene this Constitution, are hereby annulled; and an attempt to enforce such laws is declared to be an act of contumacy, punishable as the Supreme Lodge may by law provide, and such lodge or lodges doing so may be suspended by the Supreme Chancellor subject to the action of the Supreme Lodge.

Article XX. Miscellaneous Provisions.

SECTION 2. No Grand or subordinate lodge, Supreme, Grand, or subordinate court of the Order of Calanthe or formations of the Uniform Rank shall be incorporated under the laws of any district, state, territory, or province unless with the consent of the Supreme Lodge or by written consent of the Supreme Lodge or by written consent of the Supreme Chancellor. The lodges, courts, or formations of the Uniform Rank as aforesaid, desiring to be so, shall state their reasons therefor, and any lodge, court or formations of the Uniform Rank now incorporated shall forfeit their charter or articles of incorporation, if requested to do so by the Supreme Lodge, nor shall any associations of Knights of Pythias form any plans, stock companies or otherwise use the name of the Knights of Pythias or name germane thereto for the purpose of acquiring property, real or personal, without the consent of the Supreme Lodge or Supreme Chancellor.

267 SECTION 3. Where a jurisdiction obtains the consent of the Supreme Lodge or Supreme Chancellor to incorporate for endowment or other purposes, the articles of incorporation shall be "The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, The Grand Lodge Jurisdiction of ——, subordinate to the Supreme Lodge." If for the subordinate lodge, the name and number of the subordinate lodge, Knights of Pythias of North Amercia, South America, Europe, Asia, Africa and Australia, Jurisdiction of ——.

SECTION 4. Authority of the Supreme Lodge is hereby given to the following juri-dictions to conduct their Endowment Departments: Alabama, Arkansas, Florida, Georgia, Indiana, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Jersey, Ohio, Tennessee, Texas, Virginia, and West Virginia. When any

other jurisdictions are able to conduct their endowment departments, the Supreme Lodge may grant to them the authority to do so upon the approval of their proposed Endowment Laws by the Supreme Lodge of the Supreme Chancellor.

SECTION 5. The boundaries of the Grand jurisdiction are as follows:

Georgia, coextensive with the State of Georgia.

(And defining twenty-six other jurisdictions covering twenty-five other States of the United States.)

SECTION 9. No department or constituted body of the order, nor any member or members thereof shall organize in any club
268 or association using the name of the Knights of Pythias or name germane thereto where an entertainment or gathering is to be given or promoted, in which the gift, sale or use of spirits, wines or malt liquors are allowed or permitted.

Supreme Statutes.

Be it enacted by the Supreme Lodge, Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, that the following code of statutes shall constitute and be known as the Supreme Statutes of the Order of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, and as such are hereby adopted, and become the law of the Order to take effect on the approval of the Supreme Lodge.

Chapter IV. Revenue of the Supreme Lodge. Supplies.

24. The revenue of the Supreme Lodge Government shall be derived from Grand Lodge tax, per capita tax, fees for charters and the sale of supplies.

Chapter V. Vacancy in the Office of Supreme Chancellor.

34. In case a vacancy in the office of the Supreme Chancellor caused by the death or resignation, or removal from office of the incumbent as provided by law, the duties of the office shall immediately devolve upon the Supreme Vice Chancellor, who shall act as Supreme Chancellor for the remainder of the current biennial term, and until the said office shall have been duly filled by election and installation at the ensuing regular convention of the Supreme Lodge.

269 35. While acting as Supreme Chancellor in case of a vacancy in said office, the Supreme Vice Chancellor shall be known and styled "Supreme Chancellor ad interim," and shall be entitled during the period for such service to all the honors, benefits, privileges, salary and emoluments of such office; and upon the completion of the term of service as hereinbefore provided, shall be entitled to the honor of Past Supreme Chancellor; provided that, in case such vacancy in the office of Supreme Chancellor shall have been caused by removal from said office, such honor shall be attained, unless such vacancy shall have occurred at least sixty days prior to

and exclusive of the date fixed by the Supreme Lodge for its ensuing biennial convention.

36. While acting as and discharging the duties of Supreme Chancellor during the temporary absence or disability of the incumbent of such office, the Supreme Vice Chancellor shall be known styled "Supreme Chancellor pro tempore."

37. Within ten days of the time a vacancy shall have been caused by death, resignation or removal from office of the Supreme Chancellor the "Supreme Chancellor ad interim" shall appoint a Past Grand Chancellor upon whom the Supreme Lodge Rank has been conferred, to the Office of Supreme Vice Chancellor and shall, prior to the ensuing convention of the Supreme Lodge, install such officer.

38. If, in case of death, resignation, impeachment or removal from office of the Supreme Vice Chancellor, a vacancy should exist in the office of Supreme Vice Chancellor or in case of the death of the Supreme Vice Chancellor before entering upon the duties
270 of Supreme Chancellor, then and in such case, the Supreme Keeper of Records and Seal shall forthwith notify each office of the Supreme Lodge of the existence of such vacancies in the office of Supreme Chancellor and Supreme Vice Chancellor, and shall appoint a time and place at which said officers shall assemble in counsel. The place selected for such counsel if possible shall be so situated that it may be reached before the date fixed for the assembly by a majority of the said officers in not more than three days continuous travel by the ordinary modes of conveyance, and the time selected shall not be more than thirty days subsequent to the date upon which the vacancy in the office of the Supreme Chancellor shall have occurred, and notice of such assembly shall be sent ten days before the convening thereof. The Sitting Past Supreme Chancellor and next succeeding officers as they are designated in Article 7, Section 2, of the Constitution, shall be the head of the Order in such event until the Supreme Lodge Officers convene.

Chapter 9. Duties of Deputy Supreme Chancellors.

57. Deputy Supreme Chancellors shall be deemed the representative of the Supreme Chancellor, and may be appointed or removed by him at his discretion and pleasure. They shall be subject at all times to the instructions and control of the Supreme Chancellor, and shall be responsible to him for the manner in which his duties are performed.

58. Every Deputy Supreme Chancellor shall receive from the Supreme Chancellor a commission with his powers set forth therein, and he shall receive no other power than that set forth
271 therein. Such commission, unless sooner revoked, shall expire with the expiration of the term of service of the Supreme Chancellor issuing the same.

59. Deputy Supreme Chancellors shall not be permitted to delegate the powers conferred upon them to any person or persons whatsoever.

Chapter 14. Funds of the Supreme Lodge.

78. The funds of the Supreme Lodge shall not be applied to any purpose that is inconsistent with the principles or purposes of the Order. No expenditure shall be made from funds except under appropriations made in accordance with the law, and upon an order upon the Supreme Master of Exchequer properly drawn and signed.

(Section- 121 to 149 provide for the institution of Grand Lodges.)

Chapter 20. Endowment Laws of the Supreme Lodge.

155. The Supreme Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia creates an Endowment Department for the benefit of the families and relatives of deceased Knights in good standing in the Order.

156. An Endowment Department is hereby created whereby upon satisfactory evidence of the death of a Knight in good standing, who has complied with all the requirements of the Order, a sum of not less than $50.00 or more than $300 shall be paid to his widow, heirs or legal representatives, dated from the time of such Knight's initiation or reinstatement in good standing in the lodge as follows:

272 In case of death during 1st Year's membership, $50.00
In case of death during 2nd year's membership, $100.00
In case of death during 3rd year's membership, $150.00
In case of death during 4th year's membership, $200.00
In case of death during 5th year's membership, and thereafter, $300.00.

Every person, upon becoming a member of the order, shall at once procure a policy which will entitle his widow, heirs or legal representatives to the benefit of Section preceding.

(Section- 183 to 218 provide for the institution and government of Subordinate Lodges by Grand Lodges.)

Chapter XXVI. Regulation and Attainment of Ranks of Knighthood.

219. The conditions of eligibility to apply for the Ranks of Knighthood, and the manner in which such ranks, or any of them, may be attained, shall be a- prescribed in this Chapter, and not otherwise.

220. An applicant for the Ranks of Knighthood must possess the following qualifications.

(*a*) He must be a male person.

(*b*) He must be of good moral character.

(*c*) He must not be less than nineteen and not more than fifty years of age.

(*d*) He must be a believer in a Supreme Being.

(*e*) He must be in good health and sound in mind and
273 body, except that a maimed person may become eligible by dispensation from the Supreme and Grand Chancellor.

(*f*) He must believe in the maintenance of order, and the upholding of constituted authority in the government in which he lives.

(*g*) He must not have been rejected by any lodge as an applicant for the Ranks of Knighthood within the six months preceding his application.

221. Any person eligible under the provisions of the preceding section may make application for the Ranks of Knighthood to any lodge within whose territorial jurisdiction he has his actual residence.

(*a*) If any person desires to apply to a lodge other than one in the district in which he resides, but in the same Grand jurisdiction, such application must be accompanied by the permission of a lodge within the district within which he has his residence.

(Sections 222 to 370 contain general provisions as to details of government etc., and are not herein material.)

Chapter L. Pythian Period.

371. The Order of Knights of Pythias having been instituted and established on the 19th day of February 1864, the Pythian period is hereby declared to date therefrom, and each and every year thereafter succeed in numerical order, commencing with that date.

(Sections 372 to 390, chapters 50 to 58, are not material herein.)

274 Supplement. Chapter LX.

The Early Progress of the Knights of Pythias.

The Order was organized by J. H. Rathbone and others, in the city of Washington, D. C., February 19, 1864, at Temperance Hall, Friday evening, for the purpose of disseminating the principles of Friendship, Charity and Benevolence.

At the session of the Supreme Lodge of the Knights of Pythias of the World, held at Richmond, Va., March 8, 1869, an application for a charter from a body of colored citizens of Philadelphia, Pennsylvania, pray*ing* that they might be permitted to have and enjoy the great benefits and privileges of the Order of the Knights of Pythias, but such was refused on account of their color.

E. A. Lightfoot, T. W. Stringer and others, were regularly initiated into the mysteries of the Order of Page, Esquire Knight, etc., in a regular lodge, working under the control of the Supreme Lodge of Knights of Pythias of the World.

Having the example of the great and good J. H. Rathbone, the founder of the Order, actuated by a similar motive to extend Friendship, Charity and Benevolence, Supreme Grand Council of the Knights of Pythias to be known as the Supreme Lodge of North America, South America, Europe, Asia, and Africa *were* instituted, for the purpose of extending its benefits to all persons, without distinction of race or color, Lightfoot Lodge No. 1, in the City of Vicksburg, State of Mississippi, March 26, 1880 (the date of the Pythian period), with the following officers were the nucleus to-wit: (names follow)

275 Meridian Lodge, No. 2, Meridian, Miss., was organized April 15th, 1880.

Damon Lodge, No. 3, Macon, Miss., was organized April 17, 1880.

The Grand Lodge of Mississippi was organized April 17, 1880.

The Grand Lodge of Texas was organized at Galveston, in March 1883.

The Supreme Lodge was organized April 17, 1880.

The Grand Lodge of Missouri was organized at St. Louis, July, 1885.

The Grand Lodge of Virginia was organized at Richmond, November 10, 1885.

The Grand Lodge of Arkansas was organized in Pine Bluff, September 1885.

Since then the progress has been marvelous, so much so that at an early period the confines will be only limited by the horizon, at the same rate of progress. The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, are the successors; a reincorporation having been perfected on the 14th day of December A. D., 1903, by filing the articles in the Recorder's office in the District of Columbia.

A pamphlet publication with the following words printed on the front cover, to-wit:

276 "Constitution and Laws of the Grand Lodge, Knights of Pythias, State of Georgia, and Minutes of the Organization Session, at Savannah, and also Proceedings at Augusta, also Constitution for Subordinate Lodges."

The title page of said pamphlet being printed as follows:

"Constitution and Laws of the Grand Lodge, Knights of Pythias, State of Georgia. And Minutes of the Organization Session, held at Savannah, Ga., December 15, 1890."

The following extracts from said pamphlet being material and all that is material herein:

Constitution of the Grand Lodge, Knights of Pythias, State of Georgia.

Article I. Name.

This body shall be known as the Grand Lodge of Knights of Pythias, of the State of Georgia, subordinate to the Supreme Lodge Knights of Pythias, of North America, South America, Europe, Asia and Africa.

Article II. Composition and Place of Meeting.

Section 1. This Grand Lodge shall consist of:

1. All Past Grand Chancellors of this jurisdiction.
2. Grand Chancellor.
3. Grand Vice Chancellor.
4. Grand Prelate.

5. Grand Master of Exchequer.
277 6. Grand Keeper of Records and Seal.
7. Grand Master-at-Arms.
8. Grand Inner Guard.
9. Grand Outer Guard, and all Past Chancellors in good standing of this jurisdiction.
10. Three members of the Committee on Law and Supervision.
11. Three members of the Committee on Finance.
12. One Grand Representative from each subordinate lodge in good standing.
13. Grand Lecturer.
14. Grand Medical Registrar.
15. Two Supreme Representatives.

SECTION 2. The Grand Lodge shall be a migratory body, and shall meet on the first Tuesday in July of each year, and at such place as shall be determined by those entitled to vote at each session of the Grand Lodge; provided, that no two consecutive regular meetings shall be held at one and the same place.

Article III. Qualification and Members.

Every officer and member of this Grand Lodge must be a Past Chancellor in good standing in his subordinate lodge.

Article IV. Powers and Jurisdiction of Grand Lodge.

This Grand Lodge shall have jurisdiction over all lodges of Knights of Pythias within the State of Georgia; none of which can legally exist without its sanction or authority. It possesses the
278 right and power of granting charters, of suspending or taking away the same upon proper cause, of receiving and hearing all appeals, of redressing grievances and complaints arising in the lodges under its jurisdiction, of enacting laws for its own or their government and support; in al-, conformable to the laws of the Supreme Lodge.

Article V. Officers.

SECTION 1. The elective officers shall be the Grand Chancellor, Grand Vice Chancellor, Grand Prelate, Grand Master of Exchequer, Grand Keeper of Records and Seal, Grand Master-at-Arms, Grand Inner Guard, Grand Outer Guard, Grand Lecturer, and Grand Medical Director, who shall be elected annually for the term of one year.

SECTION 2. The retiring Grand Chancellor shall fill the office of Past Grand Chancellor.

Election of Supreme Representatives.

SECTION 4. The Supreme Representatives shall be elected in accordance with, and to serve such time as the Supreme Lodge Constitution requires; and in case of a vacancy during recess the Grand Chancellor shall fill such vacancy by appointment, until the next meeting of the Grand Lodge. They shall have the right of Representatives to this Grand Lodge from subordinate lodges.

Minutes of the Grand Lodge, Organization Session at Savannah.

SAVANNAH, GA., *December 15th*, 1890.

By application of the Lodges of Georgia immediately under
279 control of the Supreme Lodge of N. and S. A., E., A., and A., the Supreme Chancellor, Sir E. A. Williams, called the Lodges to meet in the castle hall of Crescent Lodge, No. 2, in Savannah, December 15th, 1890.

Proceedings of the First Semi-Annual Session of the Grand Lodge, Knights of Pythias, State of Georgia, First Day.

AUGUSTA, GA., *July 6th*, 1891.

The Grand Lodge, Knights of Pythias of Georgia, under the jurisdiction of the Supreme Lodge of N. and S. A., E., A., and A., pursuant to adjournment of the Organization Session in Savannah, met in regular session in the Market Hall, Augusta, etc.

A pamphlet publication on both the front cover and title page of which are printed the following words, and no others, to-wit:

"Constitution of the Grand Lodge, Knights of Pythias, State of Georgia. And Minutes of the Fifth Annual Session, Held at Macon, Ga., July 17th, 1894."

On both said front cover and said title page following the word "Georgia" in the foregoing quotation, is the impress of a *court* of arms, or signet, identical in design with the *court* of arms or signet, hereinbefore appearing on the cover of the Report of the *of the* Board of Control of the plaintiffs' Supreme Lodge, and also identical in design with the *court* of arms, or signet, hereinbefore appearing on the title page of the "Constitution and Supreme Statutes of North America, South American, Europe, Asia, Africa and Australia."

280 The following extract from said pamphlet publication is all thereof that is material herein.

Constitution of the Grand Lodge, Knights of Pythias, State of Georgia.

Article I. Name.

This body shall be known as the Grand Lodge of Knights of Pythias, of the State of Georgia, subordinate to the Supreme Lodge, Knights of Pythias, of North and South America, Europe, Asia and Africa."

A pamphlet publication entitled on the front cover as follows:

"Grand and Subordinate Lodge Laws Knights of Pythias of Georgia Jurisdiction of N. A., S. A., E., A., A., and Australia."

On the title page of said publication the following words only are printed, to-wit:

"Constitution of the Grand Lodge, Knights of Pythias, State of Georgia."

The following extracts from said publication are material, and all that are material herein:

Constitution of the Grand Lodge, Knights of Pythias, State of Georgia.

Article I. Name.

This body shall be known as the Grand Lodge of Knights of Pythias of the State of Georgia, subordinate to the Supreme Lodge Knights of Pythias of North and South America, Europe, Asia, Africa and Australia.

281 Article II. Composition and Place of Meeting.

SECTION 1. This Grand Lodge shall consist of:
1. All Past Grand Chancellors of this jurisdiction.
2. Grand Chancellor.
3. Grand Vice Chancellor.
4. Grand Prelate.
5. Grand Master of Exchequer.
6. Grand Keeper of Records and Seal.
7. Grand Master-at-Arms.
8. Grand Inner Guard.
9. Grand Outer Guard, and all Past Chancellors in good standing of this jurisdiction.
10. Three members of the Committee on Law and Supervision.
11. Three members of the Committee on Finance.
12. One Grand Representative from each Subordinate Lodge in good standing.
13. Grand Lecturer.
14. Grand Medical Registrar.
15. Four Supreme Representatives.

SECTION 2. The Grand Lodge shall be a migratory body, and shall meet on the second Tuesday in July each year, and at such place as shall be determined by those entitled to vote at each session of the Grand Lodge; provided, that no two consecutive regular meetings shall be held at one and the same place.

282 Article III. Qualification of Members.

Every officer and member of this Grand Lodge must be a Past Chancellor in god standing in his Subordinate Lodge.

Article IV. Powers and Jurisdiction of Grand Lodge.

This Grand Lodge shall have jurisdiction over all Lodges of Knights of Pythias within the State of Georgia; none of which can legally exist without its sanction or authority. It possesses the right and power of granting charters, of suspending of taking away the same upon proper cause, of receiving and hearing all appeals, of redressing grievances and complaints arising in the Lodges under its jurisdiction, of enacting laws for its owner their govern-

ment and support; in all, conformable to the laws of the Supreme Lodge.

Article V. Officers.

SECTION 1. The elective shall be Grand Chancellor, Grand Vice Chancellor, Grand Prelate, Grand Master of Exchequer, Grand Keeper of Records and Seal, Grand Master-at-Arms, Grand Inner Guard, Grand Outer Guard, Grand Lecturer, and Grand Medical Registrar, who shall be elected annually.

SEC. 2. The retiring Grand Chancellor shall fill the office of Past Grand Chancellor.

SEC. 3. Should vacancies occur in any of these offices during recess of the Grand Lodge, by reason of death, resignation, suspension, removal from jurisdiction, or otherwise, they shall be filled by the Grand Chancellor by appointment.

283 SECTION 4. Supreme Representatives.—The Supreme Representatives shall be elected in accordance with, and to serve such time as the Supreme Lodge Constitution requires; and in case of vacancy during recess the Grand Chancellor shall fill such vacancy by appointment, until the next meeting of the Grand Lodge. They shall have the rights of Representatives to this Grand Lodge from Subordinate Lodges.

By-Laws of the Grand Lodge Knights of Pythias, State of Georgia.

Article I. Qualifications for Membership.

SECTION 1. A Past Chancellor, previous to having the rank conferred upon him by this Grand Lodge, must present a certificate, signed by the Chancellor Commander and Keeper of Records and Seal of the Subordinate Lodge to which he belongs, giving evidence that he is entitled to the rank, and the prescribed fee for conferring the same, which shall be two dollars.

Article II. District Deputy Grand Chancellors.

SECTION 1. The State shall be divided into districts, as the Grand Lodge or Grand Chancellor may order, and for each district a District Deputy Grand Chancellor shall be appointed and commissioned by the Grand Chancellor.

SECTION 2. A District Deputy Grand Chancellor must be a Past Chancellor in good standing.

Article VI. Institution New Lodges.

Twenty or more male persons between the age of 19 and
284 55 years, having the qualifications prescribed by Section 1 of Article VII of Subordinate Lodge Constitution, can petition for a dispensation to form a new Lodge; provided that the Grand Chancellor shall have the right to institute new Lodges with a less number in localities where the required number can not be had and for a less amount than specified in Section 1 of Article IX of Subordinate Lodge Constitution. The warrant for the same

shall be granted by the Grand Chancellor, if, in his judgment the same would be for the welfare of the Order.

Constitution for Subordinate Lodges as Revised and Amended.

Article I. Name and How Composed.

The lodge shall consist of not less than seven members of the Rank of Knight, having the requisite qualifications for its elective officers, and by styles and known as — lodge, No. — Knights of Pythias, of —, possessing the powers and privileges of a Subordinate Lodge, within the jurisdiction of the Grand Lodge of the Knights of Pythias of the State of Georgia, under whose authority it exists, by virtue of a charter duly granted while acting in conformity with the laws, rules, regulations and enactments of said Grand Lodge, and those of the Supreme Lodge of North America, South America, Europe, Asia, Africa and Australia.

Article III. Officers.

SECTION 1. The elective officers of this lodge shall consist of a Chancellor Commander, Vice Chancellor, Prelate, Master of Exchequer, Master of Finance, Keeper of Records and Seal,
285 and Master-at-Arms. They shall be elected at the last stated meeting in June and December, to serve for six months. The retiring Chancellor Commander shall fill the chair of Master of Work. In case he refuses to serve, the Lodge shall elect from among the Past Master of Works one to fill said chair. Any Knight in good standing shall be eligible to any office except the office of Master of Works.

SEC. 3. All officers shall be members of the Rank of Knight, and in good standing in the Lodge.

Article VI. Ranks of the Order.

SECTION 1. The ranks of the Order, styled and known as Page, Esquire and Knight, shall be conferred upon such applicants only as are qualified according to the laws, rules and regulations. No rank shall be conferred on any pretense whatever, until the prescribed fee for that rank has been paid to the Master of Finance.

Article VII. Qualification for Membership and Fee for Ranks.

SECTION 1. No person shall be initiated into this Lodge who is under nineteen or over fifty-five years of age; of good moral character sound in mind and body—producing a surgeon's certificate in evidence of that fact—and a believer in the Supreme Being. Every application for membership must be accomplished with the initiation fee. No person who is a resident of a city of town where there is a Lodge of this Order shall be initiated into this Lodge without permission from the Lodge located in the place where the candidate resides. In no case shall the fee be less than eight (8) dollars for

the three ranks, except by dispensation from the Su-
286 & 287 preme Chancellor, issued upon application from the Grand Lodge or Grand Chancellor.

SECTION 2. Application for Membership. Application for initiation must be signed by the petitioner, stating his age, residence and occupation, and whether he has ever been rejected or suspended by any Lodge of the Order, and must be indorsed by the Knights in good standing who are members of this lodge. The application must be entered on the records and referred to a committee of three for an investigation (none of whom shall have recommended him) whose duty it shall be to report on the character and qualifications of the applicant at the next regular meeting, or at such time as shall be prescribed in the By-Laws, except in case of its withdrawal by a vote of three-fourths. No application can be withdrawn after it has been balloted on. All applications shall be balloted on, whether the committee's report be favorable or not. If the ballot be fair, the candidate may be admitted.

(The balance of Article VII and Articles VII to XXI inclusive, relate to details not herein material.)

In the same printed volume appears the following:

"Endowment Laws of the Grand Lodge Knights of Pythias, State of Georgia. Subject to the Supreme Lodge, N. A., S. A., E., A., E. and Australia."

(Then follows regulations for the governance of the department of endowment, not material to be herein incorporated.)

The charter under which the defendants and their associates maintain their organization and society, a copy of which is as follows:

288 *Issued in Lieu of the Original Charter.*

Friendship, Charity and Benevolence.

Knights of Pythias
of
North America, South America, Europe, Asia, Africa and Australia.

F. C. B.

To All Whom It May Concern, The Supreme Lodge to Whom These Presents Shall Come, Greeting:

Know ye, That by virtue of the power vested in the Supreme Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, reposing especial trust and confidence in the following Knights, C. D. Creswill, C. C., C. A. Clark, C. V. C., Rev. J. W. Roberts, C. P., B. W. Warren, C. K. of R. & S., F. M. Cohen, G. M. of E., G. W. Brown, G. M. at A., C. A. Shaw, G. of W., G. Taylor, G. L., Dr. H. R. Butler, G. M. R., J. W. Davis, G. I. G., H. B. Sweet, G. O. G., and their successors doth grant this Charter to a Grand Lodge for the jurisdiction of Georgia, to be hailed by the title of Grand Lodge, Jurisdiction of Georgia, of the Knights of

Pythias of North America, South America, Europe, Asia, Africa and Australia for the purpose of promulgation and practicing the great principles of Pythian Friendship. And the said Grand Lodge, Jurisdiction aforesaid, being duly and lawfully formed, is hereby authorized and empowered to grant warrants to subordinate lodges for the purpose of conferring Ranks of Page, Esquire and Knight according to the Constitution and General Laws of the Order as established by the Supreme Lodge Knights of Pythias aforesaid, upon all persons duly proposed and lawfully qualified to receive the
289 same.

And the said Grand Lodge, Jurisdiction aforesaid, doth solemnly promise to act according to the laws of the Order and in obedience to the commands and enactments of the said Supreme Lodge. In default thereof, this Charter may be suspended or taken away at the pleasure of the Supreme Lodge aforesaid, or Supreme Chancellor thereof. And the above named Grand Lodge officers of said Grand Lodge and jurisdiction are hereby further empowered to install their successors when duly elected, to whom they shall deliver this Charter.

In witness whereof We have hereunto subscribed our names, affixed the seal of the Supreme Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia this the fifteenth day of January, Anno Domini, 1905, and of the Pythian Period the XLIst.

(Signed) S. W. STARKS,
Supreme Chancellor.

Attest:
(Signed) C. K. ROBINSON, *S. K. of R. & S.*

[Seal Supreme Lodge K. of P. N. A., S. A., E., A., A. and A., Incorporated December 14, 1902. District of Columbia.]

290 No. 14190.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA,
vs.
CHARLES D. CRESWILL, ET AL.

In Fulton Superior Court.

Trial May 26, 1903.

Charge of the Court.

GENTLEMEN OF THE JURY: The plaintiffs in this case have filed in this court their petition against the defendants, in which they aver that about the year 1864 there was organized in this country what is known as the Knights of Pythias. That that Order consisted of Lodges, Grand Lodges and a Supreme Grand Lodge. They say that they are members of the Supreme Grand Lodge, and that they are members of the Grand Lodge and subordinate Lodges in the State of Georgia, and that they as members of the subordinate lodges in

the State of Georgia, are exercising the rights that they do exercise by the authority of the Supreme Grand Lodge of the Knights of Pythias, and that they by authority of these lodges have the use of the name, and that that name is Knights of Pythias, and that they have been known by that name. They say that the defendants many years after they had used this name commenced to use the name Knights of Pythias. They say that the defendants many years after they had established and created insignia, and emblems undertook to use the same insignia and emblems that they were using and they say that this conduct upon the part of the defendants is a fraud upon them. The defendants have filed an answer, in which they deny that
291 the plaintiffs had any right to appropriate the name "Knights of Pythias." They say that they have as much right to use that as the plaintiffs. They deny that they are using the name as that used by the plaintiffs. They say that the name they use is the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia and that these suffixes to their name distinguishes them from the name of the plaintiffs, and that it would be impossible for anybody to confuse their Order with the Order of the plaintiffs. They say for the same reason that they have not infringed upon the name of the plaintiffs, because of this suffix which distinguishes their name and their Order from the name of the plaintiffs' and they deny that they have committed any fraud upon the plaintiffs in the use of their name, their insignia or their emblems. They also say that for many years they have been an organization under the name that they are now under, and that they have established an endowment feature, an insurance feature, and that they are collecting and disbursing large sums of money, and have a large membership and that it would be very damaging to them to be interfered with at this time, and that the plaintiffs in this case have acquiesced for so long a time in their use of this name, insignia and emblems, that they can not now be heard to object to that use.

The effect of this answer of the defendants is to put the burden of proof upon the plaintiffs to establish their contentions by a preponderance of the testimony, and to put the burden on the defendants to establish their contentions of acquiescence upon the part of
292 the plaintiffs by a preponderance of the evidence. So that the burden is upon the plaintiffs to establish their contention, and the burden is upon the defendants to establish the acquiescence of the plaintiffs.

The burden of proof means the greater weights of evidence, the superior weight of evidence, and while it may not be sufficient to remove every reasonable doubt from the mind, it is sufficient to incline a fair and impartial mind to one side of the issue than to the other. In determining where the preponderance of the evidence is on any disposed issue in the case, you will look to all the testimony in the case, and look to the witnesses as they are presented to you on the witness stand, their manner of testifying, their intelligence, their means and opportunities for knowing the things about which they testify, the nature of the testimony as delivered by them, the reasonableness or unreasonableness of the testimony as delivered by them;

the interest or want of interest that any of them may have in the result of the case, and the credibility of the witnesses in so far as it may legitimately appear from the trial. You may also consider the number of the witnesses testifying to any disputed point, though the preponderance is not necessarily with the greater number of witnesses.

A number of persons may associate themselves together, for the purpose of promoting any lawful enterprise. Fraternity, benevolence or charity would be among such lawful enterprises. Having thus associated themselves, they would be authorized to use a name by which they would be known; and, under certain circum-
293 stances they would be protected in the use of that name. The name might be such as would indicate the purposes of the association, or it might be arbitrary or fanciful. Words or phrases which are arbitrary and fanciful, as applied to an association of persons for legitimate purposes, may constitute a valid trade name. Words or phrases are arbitrary and fanciful when they do not by their usual meaning denote or indicate the purposes of the association, but come to indicate their purpose by application and association. The name of an historical or mythological event, or of a person long since dead, would be an arbitrary or fanciful name. An association first appropriating and using an arbitrary or fanciful name acquires a property right in that name.

If an association of persons have acquired by appropriation and use, a proprietary right in a name that is arbitrary and fanciful, no other associations of persons would have the right to fraudulently copy or infringe upon that name. An infringement upon a trade name would be such a colorable imitation of the name, that the general public, in the exercise of reasonable care, might think that it was the name of the plaintiffs.

Fraud upon the part of the defendants would be a use of the name of the plaintiffs, or an infringement thereof, with the intent to make the impression upon the general public that their association and the plaintiffs' association were the same general Order.

If the association first appropriating and using a name have a clear right to the use of the name, its subsequent use by an-
294 other association, knowing of this right, would be presumed by the law to be fraudulent, but this presumption could be rebutted by testimony.

An infringement of a trade name would be presumed to be fraudulent, if the association first appropriating and using it have a clear right to its use, and the association infringing upon the name knew of this right.

Ordinarily, the jury in a case render a verdict for the plaintiffs or for the defendants, but our law provides that in some cases questions may be propounded to the jury, to be answered by them, and the answers of these questions is the verdict of the jury. In this case, the court propounds some questions to the jury, and you are to answer these questions. I have given you certain instructions on the evidence you have heard from the stand, and which has been introduced to you in documents. The answer of these questions will re-

quire that you understand the instructions which the court has given you, and that you understand the evidence which is before you, and that you apply the evidence to the instructions, and answer the questions. The court has instructed you as to a proprietary right in the name. The court has instructed you as to what would be an infringement. The court has instructed you as to what would be fraud. The court has told you what he understands to be the law. You are to determine what is the evidence, and when you apply the evidence to the instructions which the court has given you, your answer may be one thing or it may be another, just as you understand the evidence, and as you apply it to the instructions. A great many of these questions, gentlemen, involve no question of
295 law; they are simply questions of fact. You will decide these from the evidence in the case. And many of them involve both law and evidence. You will take the instructions from the court, and apply them to the evidence, and answer the questions as you may determine from the instructions of the court and the evidence in the case.

The first question that is propounded to you in this: "Is the proposed corporate name of the defendants infringement on the name of plaintiffs' association?" I have instructed you what an infringement is. You will look to the name of the defendants, and determine whether or not under the instructions that I have given you and the evidence in the case, whether that name is an infringement of the name of the plaintiffs.

Two. If it is such infringement, would it affect or injure plaintiffs in any property right? The court has instructed you as to when a name will become a property right, and you will look to the evidence and see whether or not the name of the plaintiffs in this case is as to them a property right, and answer that question as you understand it from the evidence under the instructions which I have given you. If so, what? If it is such infringement, would that affect or injure the plaintiffs in any property right? You answer that yes, or no, and if so what property right? You would answer what property right, and if you determine that the plaintiffs, under the instructions which I have given you, have a property right in the name, then you should answer that question by stating,
296 if so, what, in using the name. If they have no property right in the name, under the instructions which I have given you and the evidence, you would answer the first question No, that it has not affected them in any property right.

Three. If so, is there any fraudulent purpose or design in so infringing? The court has instructed you what would be fraud, what evidence would establish fraud, and the presumption of fraud, and the fact that this presumption may be rebutted by evidence, and bear in mind the instructions which the court has given you in reference thereto, and determine whether or not this infringement, if there has been such infringement, had a fraudulent purpose or design upon the part of the defendants.

Four. Are any of the emblems or insignia of defendants the same

as any of those used by plaintiffs, and if so, does such use injure plaintiffs in any property right?

Five. Have the plaintiffs acquiesced in the use by defendants of the name and insignia, and if so, how long? In answering this question, gentlemen, you will look to the testimony and the court instructs you that the plaintiffs, before they could be held to have acquiesced in the use of the name and insignia by the defendants, must know that the defendants were using their name and insignia; and if they knew of that use, and took no steps to prevent it, that would be acquiescing.

Six. Is it true that since the organization of the Order represented by petitioners, and its introduction into the State of
297 & 298 Georgia, it has been called the Order of Knights of Pythias, and that its members have been known as Knights of Pythias or Pythian Knights indifferently?

Seven. Is it true that "Pythias" is the distinctive word in the name of the Order represented by petitioners, which ordinarily distinguishes it from the name and style of other fraternal orders in the State of Georgia and in the United States?

Eight. It is true that the name set forth in defendants' petition for incorporation is substantially identical with the name and style of your petitioners, the Grand Lodge Knights of Pythias of Georgia. The Court instructs you that in passing upon that question you would consider what I have told you with reference to colorable imitation.

Nine. It is true that the name set forth in defendants' said petition for incorporation is a colorable imitation of the name and style of your petitioners, The Grand Lodge Knights of Pythias of Georgia. I have instructed you as to what a colorable imitation is. You are to answer that question from the evidence in the light of those instructions.

Ten. It is true that the use by defendants and their associates of the name under which they are seeking incorporation would work a fraud upon your petitioners and their associates the public, in that the name under which defendants propose to incorporate is a colorable imitation of the name of petitioners?

Eleven. Is it true that defendants can not show any organization of any kind until 1880, and until long after the Grand Lodge Knights of Pythias of petitioners was organized in the State of Georgia?

299 Twelve. Is it true that the use of the word "Pythias" immediately in conjunction with the words "Knights of" in the name under which defendants and their associates are seeking incorporation is a colorable imitation of the name of your petitioner, The Grand Lodge Knights of Pythias of Georgia? As to what is a colorable imitation, I have instructed you as to the law, and you will have to determine what the facts are.

Thirteen. Is it true that defendants of the "Supreme Lodge of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia" are wearing emblems and insignia in color, design and lettering with the emblems and insignia of peti-

tioners, The Grand Lodge Knights of Pythias of Georgia; and it is true that the wearing and use of such insignia and emblems work a fraud upon either petitioners or their associates, or the public?

Fourteen. Have the defendants used the name Knights of Pythias or the letters K of P without any affix or suffix thereto? You will answer this question, which is the last question. After you have answered all the questions you will sign under them by your foreman, write the word foreman under the name of the foreman, and date it.

The court will say to you, gentlemen of the jury, that the pleadings will be out with you, and if you desire a fuller understanding of the contentions of the plaintiffs and the defendants, you may refer to the petition and the answer for those contentions. When the defendants admit a paragraph of the plaintiffs' petition,
300 it may be assumed to be true without evidence. But when the defendants deny, or state that for want of sufficient information, they can neither admit nor deny, then the burden is on the plaintiffs, as I have indicated to you, to establish that by a preponderance of the testimony. You may retire, gentlemen, and consider the case.

The foregoing charge is approved as correct, and ordered filed as a part of the record in this case.

This June 22, 1908.

J. T. PENDLETON,
Judge S. C. A. C.

301 We agree that the above and foregoing pages contain a true and correct brief of the evidence on the trial of the case stated Dec. 5th, 1908.

BELL, PETTIGREW & BELL,
Movant Att'ys.

JOHN P. ROSS,
HAMILTON DOUGLAS,
Att'ys for Plaintiffs.

Approved. Let the same be filed. Dec. 5th, 1908.
J. T. PENDLETON,
Judge S. C. A. C.

Filed in office this the 5th day of Dec., 1908.
W. H. ABBOTT, *D. C'lk.*

302 STATE OF GEORGIA,
County of Fulton:

I hereby certify, That the foregoing pages, hereunto attached, contain a true Transcript of such parts of the record as are specified in the Bill of Exceptions and required, by the order of the Presiding Judge, to be sent to the Supreme Court, in the case of C. D. Creswill et al., plaintiffs in error, vs. Grand Lodge Knights of Pythias of Georgia, defendants in error.

I was unable to transmit this record in the time prescribed because of volume of business in this office.

Witness my signature and the seal of Court affixed this the 19 day of January, 1909.

[SEAL.] ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia,
Ex-officio Clerk City Court of Atlanta.

303 Supreme Court of the State of Georgia.

ATLANTA, *February* 21, 1910.

The Honorable Supreme Court met pursuant to adjournment.

Present, the Second Division.

The following judgment was rendered:

C. D. CRESWILL et al.
vs.
GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. Fish, C. J., and Evans and Atkinson, JJ., being disqualified, Judges R. W. Freeman, of the Coweta Circuit, H. G. Lewis, of the Ocmulgee Circuit, and Price Edwards, of the Tallapoosa Circuit, were designated to sit in their stead. After argument, it appearing that Judge Lewis was also disqualified, counsel agreed that the case be decided by the remainder of the court which heard it. The judgment is concurred in by all the members of the court as thus constituted.

304

189.

16 Atlanta, March T., 1909.

CRESWILL
vs.
GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA.

By the COURT:

1. Where an association known as the Knights of Pythias, with a supreme lodge incorporated in the District of Columbia, and a grand lodge un-incorporated in this State, the main objects of which were fraternal and benevolent, but which received and owned large amounts of property and had an insurance feature, acquired a proprietary right in the name by which it was known and under which it operated, no other association of persons organized for similar purposes had the right to fraudulently copy or infringe upon that name.

(*a*) The mere addition to the distinctive name of the defendants'

association of the words "of North America, South America, Europe, Asia, Africa, and Australia, jurisdiction of Georgia," can not be declared as matter of law to constitute such a difference as to make the name so altered free from the complaint of being an infringement, or to render the finding of the jury that there was a fraudulent infringement contrary to law.

2. Upon an application to the superior court for the grant
305 of a charter for a private corporation, the law of this State makes no provision for another person to make himself a party to the proceeding for the purpose of resisting or objecting to the grant of the application. But another corporation or association which has acquired a proprietary right in a name may apply to a court having equitable jurisdiction to enjoin the applicants from fraudulently appropriating such name and obtaining a charter under it for a similar organization, and copying its insignia, badges, and emblems, to the detriment of the plaintiff.

3. The evidence authorized the jury to find that there had been no such laches on the part of the plaintiffs as to bar them from a right to equitable relief.

4. Under the facts of this case, the rulings made by some courts that generally a foreign corporation has no right to enjoin a domestic corporation, which has been chartered under a similar name, from continuing to do business thereunder, especially in the absence of fraud, are not applicable.

5. This was not a suit between two corporations chartered in the District of Columbia under the general incorporation act of May 5, 1870. The incorporated Supreme Lodge of the plaintiffs' association was a party, but that of defendants' association was not so. An assignment of error based on a contrary hypothesis was without merit.

6. Where the plaintiffs did not allege or base their proceed-
306 ing on the fact that the defendants were colored persons, and the judge in charging the jury made no reference to the racial or social status of either the plaintiffs or the defendants, but submitted the issues as to the rights of the parties without reference to race or color, and the evidence authorized the finding against the defendants regardless of any consideration of their color, it can not be held that such finding was in conflict with that provision of the constitution of the United States which declares, "nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

7. No ground of the motion for a new trial requires a reversal.

EDWARDS, *J.*:

Charles D. Creswill and others made application to the superior court of Fulton county to be incorporated and made a body politic for the full period of twenty years, with the usual privilege of renewal at the expiration of said term, under the corporate name and style of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa, and Australia, jurisdiction of

Georgia. The petition set forth that the object of petitioners was not pecuniary gain, but was the social and benevolent benefit of its members and their dependent relatives. They asked to be allowed
307 to organize and charter subordinate lodges in this State and to provide an endowment fund, etc. The defendants in error, the Grand Lodge Knights of Pythias of Georgia, T. H. Nickerson, D. J. Bailey, John P. Ross, William H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley, and George T. Cann, filed in said superior court a petition seeking to enjoin the plaintiffs in error from prosecuting said application to be incorporated under the name set forth in the petition for charter, or under the name, "Grand Lodge Knights of Pythias of Georgia," or any colorable imitation of such name, and from using any name embracing the word "Pythias" in conjunction with the words "Knights of," or any name which is a colorable imitation of said Grand Lodge Knights of Pythias of Georgia, and from using and wearing emblems and insignia like or a colorable imitation of the emblems and insignia of petitioners; and for general relief. The court granted a rule nisi and a temporary restraining order. On the hearing the Supreme Lodge Knights of Pythias was made a party plaintiff, and it adopted the averments and prayers of the original petition.

Without going fully into the details of the plaintiffs' petition it is sufficient to state that the following is alleged: The order of Knights of Pythias of which they were members was organized by Justice H. Rathbone in Washington, D. C., on February 19, 1864, and as a voluntary fraternal society adopted the name "Knights of Pythias,"
and has since been in continuous existence throughout the
308 United States, using said name. The first Grand Lodge known as the Grand Lodge Knights of Pythias of the District of Columbia was organized in 1864. The Grand Lodge of Pennsylvania was organized in 1867, and the Grand Lodge of New Jersey and the Grand Lodge of Maryland were each organized in 1868. These grand lodges organized the Supreme Grand Lodge Knights of Pythias for the United States on August 11, 1868. Since then the plan has been to organize and maintain subordinate lodges in the cities and towns throughout the United States and a grand lodge in each of the States and Territories of the United States, subject to and forming a part of the Supreme Lodge of the order from which subordinate lodges and grand lodges obtain authority and to which they owe allegiance. The first subordinate lodge in Georgia was organized in 1869, and the Grand Lodge of Georgia was organized in 1871. The Supreme Lodge was incorporated under the laws of the United States in the District of Columbia, August 5, 1870; its articles of incorporation were amended under said laws, October 5, 1875, and again on May 5, 1882, the name of the order being preserved in its entirety. The plaintiffs' order of Knights of Pythias was incorporated by an act of Congress approved June 29, 1894, by which all the rights, powers, and liabilities of the Supreme Lodge Knights of Pythias, incorporated on August 5, 1870, were preserved and made to survive to the politic and corporate which was created by the act. This act of 1894 was

amended by act of Congress approved June 7, 1900, the terms
309 of this amending act being to make valid all meetings of the legislative bodies of the order held outside of the District of Columbia. The order of plaintiffs' embraces more than 650,000 members, and the subordinate lodges in Georgia own assets valued at $160,319.08. There are in Georgia 143 sections of the insurance branch, with 2,327 members carrying an insurance protection of $4,113,500. The first lodge of the defendants' order was organized in Mississippi in 1880. Their Supreme Lodge was organized on October 10, 1889. Their first subordinate lodge in Georgia was organized in 1886, and their Grand Lodge for Georgia was organized in 1890.

The defendants by their answer neither affirmed nor denied the historical part of plaintiffs' petition as above set forth. They denied that their order had sprung from the plaintiffs' order, that they had received any authority from plaintiffs' order to organize lodges, and that their name is identical with the name of the plaintiffs' order, or is an imitation of the same. They set up, that the Supreme Lodge Knights of Pythias of North America, South America, Europe, Asia, and Africa was incorporated on October 10, 1889, by virtue of the act of Congress of the United States approved May 5, 1870, and organized under said charter lodges throughout the United States and other countries; that said corporation was reincorporated on the 14th of December, 1903, in order to more perfectly comply with the laws of the various States relative to fraternal societies doing business therein, which
310 reincorporation was in the name last above mentioned, with the suffix, "Australia," that this incorporation has been in active work ever since its organization in 1889; that the sole purpose of defendants in asking incorporation under the laws of Georgia is to form a more perfect union among the subordinate lodges, with a governing head which would have authority and be amenable to the laws of Georgia and be able to better enforce obedience among its several members and subordinate lodges; that its signs, symbols, emblems, insignia, and other paraphernalia have been adopted by said corporation honestly and fairly, and it has a perfect right thereto; and that its membership in the United States numbers 80,747, and in Georgia 11,805.

The case came on for a hearing on the motion for preliminary injunction, upon substantially the above record, when injunction was refused. The plaintiffs brought the case by bill of exceptions to this court. The judgment of the court below was by this court affirmed with direction. Grand Lodge Knights of Pythias v. Creswill, 128 Ga., 775. By reference to this decision it will be seen that all questions of law or fact on the final trial of the case, except as therein ruled, were left open to be then determined; the only question settled being the point of want of proper parties plaintiff, which point it was held had been adjudicated in the court below, no exception to the ruling allowing amendments for this purpose having been taken.

311 The case coming on for trial in the court below, a verdict was rendered in favor of the plaintiffs against the defendants, and decree was entered as prayed for by the plaintiffs. The defendants moved for a new trial upon various grounds, which motion having been overruled, the case was again brought to this court for review. The original motion for a new trial and the amended motion contained forty grounds. The view we take of this case renders it unnecessary to discuss in detail the various grounds of the motion for a new trial, except those complaining that the verdict is contrary to the law and without evidence to support it. The record in the case is quite voluminous, but is made up largely of exhibits attached to the plaintiffs' petition and the defendants' answer, each setting out copies of proceedings to incorporate and reincorporate under the various acts of Congress. Each side has also put in the record certified copies of the constitution of the Supreme Lodges and the Grand Lodges and the statutes, declarations of principles, and much statistical matter pertaining to each order.

Neither plaintiffs' nor defendants' order has ever incorporated in the State of Georgia. Seniority in the selection of the name, seniority of organization under the name with its continued use, and seniority of incorporation under the general laws enacted by Congress and seniority of organization in Georgia are all in favor of the plaintiffs' case. It is well established by the evidence
312 that the word "Pythias" is the distinctive word in the name of both orders. This word is used indifferently in all the designations made by both orders touching its name and order. While the defendants' order in its original incorporation added the suffixes, "of North America, South America, Europe, Asia, and Africa," and in a subsequent incorporation added "Australia," the testimony oral and documentary shows that its order was called and known to the public as the order "Knights of Pythias," "K. P.'s," etc. In the "Declaration of Principles" put in evidence by the defendants it is declared that "the order of the Knights of Pythias is founded in Friendship, Charity, and Benevolence," and the suffixes beginning with North America, etc., are not used. In the "Supreme Constitution" introduced by defendants in its narrative touching the early progress of the "Knights of Pythias" it is recited that "the order was organized by J. H. Rathbone and others in the City of Washington, D. C., February 19, 1864." (This is the date of the founding of the plaintiffs' order.) It is further recited, in the history of the early progress of the defendants' order, that "at the session of the Supreme Lodge of the Knights of Pythias of the World" (plaintiffs' order), held at Richmond, Va., March 8, 1869, an application for a charter from a body of colored citizens of Philadelphia, Pennsylvania, praying that they might be permitted to have and enjoy the great benefits of the Grand Order of the Knights of Pythias was refused on account of their color." It is also fur-
313 ther recited in the by-laws of the defendants' order, introduced by the defendants: "the order of Knights of Pythias

having been instituted and established on the 19th of February, 1864, the Pythian period is hereby declared to date therefrom."

It is conceded that the emblems publicly used by the defendants' order are identical with those worn and used by the plaintiffs' order, this fact being testified to by Creswill, one of the defendants. Some confusion has arisen in Georgia in the delivery of the mail of the plaintiffs' order, but this confusion is not shown to any great extent. On one occasion a member of plaintiffs' order, seeking the "K. P. Hall" of his own order, was directed to the "K. P. Hall" of the defendants' order. There is really very little if any material conflict of evidence between the parties. As above stated, the jury found in favor of the plaintiffs, this finding being: that the proposed corporate name of the defendants is an infringement upon the name of plaintiffs' association; that such infringement injured plaintiffs in their property right in their name; that this infringement is of fraudulent purpose and design; that the emblems or insignia used by the defendants are the same as those used by the plaintiffs, and such use injures plaintiffs in their property rights; that the plaintiffs have not acquiesced in the use by defendants of the name and insignia; that since the organization of the order represented by petitioners, and its introduction in the State
314 of Georgia, it has been the order of the Knights of Pythias, and its members have been known as Knights of Pythias or Pythian Knights; that "Pythias" is the distinctive word in the name of the order represented by plaintiffs, which cardinally distinguishes it from the name and style of fraternal orders in the State of Georgia and in the United States, and the name set forth in defendants' petition for incorporation is substantially identical with the name and style of petitioners, the Grand Lodge Knights of Pythias of Georgia; that the name set forth in defendants' petition for incorporation is a colorable imitation of the name and style of petitioners, the Grand Lodge Knights of Pythias of Georgia; that the use by the defendants and their associates of the name under which they are seeking incorporation would work a fraud upon the plaintiffs and their associates and the public, in that the name under which defendants propose to incorporate is a colorable imitation of the name of the order of plaintiffs.

1. The first question of law which presents itself is whether the plaintiffs in the court below have shown such infringement of the name of their order, and the use of their insignia, as entitles them, under the law, to the relief which they ask. It is well settled that a number of persons may associate themselves together for the purpose of promoting any lawful enterprise. Fraternity, benevolence and charity are among such lawful enterprises. Having thus associated themselves, they are authorized to use a name by which they will be known, and under certain circumstances they will be protected in the use of the name chosen. The name may be such as in-
315 dicates the purpose of the association, or it may be arbitrary or fanciful. Words or phrases which are arbitrary or fanciful as applied to an association of persons organized for legitimate purposes will constitute a valid trade name. It has been held that

words or phrases are arbitrary or fanciful when they do not by their usual and ordinary meaning denote or indicate the purposes of the association, but come to indicate their purpose by application and association. The name of an historical or mythological event, or of a person long since dead, would be an arbitrary or fanciful name. An association first appropriating and using an arbitrary or fanciful name acquires a property right in that name. Where an association of persons have acquired, by appropriation and use, a proprietary right in a name that is arbitrary and fanciful, no other association of persons have the right to fraudulently copy or infringe upon that name. Paul on Trade-Marks, §160. An infringement upon a trade name is such a colorable imitation of the name that the general public, in the exercise of reasonable care, might think that it is the name of the association first appropriating the name. Fraud on the part of the infringer is the use of the name, or infringement thereof, with the intent to make the impression upon the general public that the infringer's association and the association first appropriating the name are the same. If the association first appropriating and using a name have a clear right to the use of the same, its subsequent use by another association knowing of this right is presumed by the
316 law to be fraudulent. It has been held that even the innocent or accidental use of a trade name capable of exclusive appropriation will be enjoined.

The plaintiffs' order, while primarily fraternal and benevolent, has certain property and business attributes and activities, including the acquiring and ownership of large amounts of property, and the conducting of a department of insurance protection. Under the evidence, the element of injury is sufficiently shown. Moreover, as to the corporate plaintiff, the name of the corporation is in some degree analogous to a trade-mark. Clark on Corporations, 64. The finding of the jury in this case, that the use of the name of the plaintiffs' order by the defendants was with fraudulent purpose and design, we think is supported by the evidence. It appears from the testimony that both the plaintiffs' order and the defendants' order took out articles of incorporation under a general act of Congress of May 5, 1870, which makes provision for a summary suing out of articles of incorporation by persons desiring to associate themselves together for any lawful purpose. 16 United States Statutes at Large, 101. It will be remembered that the plaintiffs' order filed its articles on August 5, 1870, and the defendants' order October 10, 1889. This act contains the following provision relative to the names to be taken by the proposed corporation: "The provisions of this act shall not extend to nor apply to any association or individual who shall, in the certificate filed with the register of deeds, use or
317 specify a name or style the same as that of any previously existing incorporated body in the District of Columbia." Counsel for defendants contend that the name they are seeking to appropriate by incorporation is not substantially the same or a colorable imitation of the plaintiffs' name. They say they make the name essentially different by adding the names of the continents, North America, South America, Europe, Asia, Africa and Australia. We could not agree with this contention of the defendants if the

names of the continents thus used as suffixes were employed in every instance where the order is designated; for it is well established by the proof that the distinctive words in both orders are the words "Knights of Pythias." At one time in the history of the plaintiffs' order, from the time of its incorporation under the act of 1870 to the time of its incorporation by the special act of Congress of 1894, the Supreme Order was known as the "Supreme Order Knights of Pythias of the World." The defendants, in specifying their field of operation, do not specify the entire earth, but the main continents thereof. These words denoting latitude of operation are not distinctive, and they are not always added in the use of the name. It is the use and colorable or imitative character of the name that controls, and the use made of the name by the association alleged to have infringed is a question of fact for the jury. Foster, Milburn & Co. v. Blood Balm Co., 77 Ga. 216; Lies v. Daniel, 82 Ga. 272; Whitley Grocery Co. v. McCaw Mfg. Co., 105 Ga. 839. The
318 addition of the word "Artificial" by suffix to the name "Carlsbad Sprudel" does not prevent infringement, "Carlsbad" being the distinguishing word. The name "National Folding Box and Paper Company" is infringed by the name "National Folding Box Company Limited." "The imitation need only be slight, if it attaches to what is most salient." Johnson v. Bauer, 27 C. C. A. 374, 82 Fed. 662; McCann v. Anthony, 21 Mo. App. 83; Saxlehner v. Eisler & Mendelson Company, 179 U. S. 19, 31; Paul on Trade-Marks, §§59, 168, 170, 188.

The plaintiffs in error rely upon the case of Supreme Lodge Knights of Pythias v. Improved Order Knights of Pythias, 113 Mich. 135 (38 L. R. A. 658), in which it was held that these names are not so similar as to cause one to be taken for the other. We do not believe that this case is in line with the trend of authorities on the subject of similarity of names. It evidently turned largely on the merits of the defendants' case as against the plaintiff which was seeking the injunction. It appears that the members of both orders had been members of the plaintiff's order, and that a law had been enacted in the plaintiff's order, prohibiting the publication of its constitution, statutes, by-laws, rituals, etc., in any language other than English. Those who afterwards organized the defendants' order, being foreigners by birth and many of them unable to read the English language, for this cause withdrew from the plaintiff's order. The plaintiff's order had made the members of the defendants' order, Knights of Pythias, and therefore did not stand in
319 the same relation to them as does the plaintiffs' order in the case at bar. Here no authority was given by plaintiffs to use the name, but such authority was expressly refused. After such refusal the persons under whom the defendants claim to operate appropriated the name of the plaintiffs' order, in the very teeth of the law by which they claim to have legal existence.

The Supreme Court of Tennessee has recently passed on a case similar to this one. In that case Neil, J., says: "We are of the opinion that the injunction was properly awarded and made perpetual. While the complainant was not engaged in business for profit, in the sense of commerce and trade, yet it employed certain business

activities for the purpose of maintaining itself and to procure funds to carry out the purposes of its organization; and it maintained certain business institutions, its club-houses and its home for aged and invalid members. The name it had acquired and appropriated has become very valuable in the nature of a trade-name etc. Benevolent and Protective Order of Elks v. Improved Benevolent and Protective Order of Elks, 118 S. W. 389. In a recent case of the Benevolent and Protective Order of Elks v. The Improved Benevolent and Protective Order of Elks of the World, and the Grand Lodge of the same, in the Supreme Court of New York, an injunction was granted on July 18, 1908. In the Appellate Division the judgment was affirmed on a memorandum decision. See 62 N. Y. Supp. 355.

2. It is contended that under the provisions of our law no
320 one will be heard to object to the creation of a corporation by the superior courts, that the power exercised by the superior courts in granting charters is legislative and not judicial, and therefore that a charter will be granted as a matter of course. See Civil Code, §2350. It is true that it has been held that the act of the superior court in granting a charter under the statue is legislative in its character, rather than judicial. Gas Light Co. v. West, 78 Ga. 318. It is quite clear that the provisions of our law on this subject have not been framed to enable a stranger to the proceeding to make himself a party thereto, either as objector or otherwise, in order to resist the same; but it has never been held, to our knowledge, that any person whose name would be affected by the granting of a charter to one who fraudulently undertakes to appropriate such name, could not assert his right in equity in a direct proceeding for that purpose, and make the same effective by injunction. On the contrary it has been distinctly held by this court that such right may be thus asserted. Lane v. Brothers and Sisters Evening Star Society, 120 Ga. 355.

3. The defendants contend that the plaintiffs have been guilty of such laches as estops them from having injunction against the use by defendants of the name in controversy. As before stated, the evidence in this case amply establishes the fact that the defendants or those under whom they assert a claim of right to operate, took
321 the plaintiffs' name not only without authority but after defendants had been by the plaintiffs' order expressly refused; and further that the name was adopted in articles of incorporation under a statute which expressly forbade the use of a name already appropriated by another. This puts the defendants' case within that class where the name has been taken and is used in fraud of the plaintiffs' right. The Civil Code, §3939, provides: "Equity gives no relief to one whose long delay renders the ascertainment of the truth difficult, though no legal limitation bars the rights." The status of each order, from the organization of each, is clearly shown by the testimony submitted by each side, and, as before stated there is very little dispute between the parties so far as the testimony is concerned. A perusal of the record in this case makes it clear that the delay of the plaintiffs in bringing this suit has not prejudiced the defendants

in their ability to ascertain the truth. Does section 3775 of the Civil Code afford a rule for equitable estoppel? It provides, "The limitations herein provided apply equally to all courts; and in addition to the above, courts of equity may interpose an equitable bar, whenever, from the lapse of time and laches of complainant, it would be inequitable to allow a party to enforce his legal rights." Among the "legal rights" sought to be enforced in many cases of this character is that of damages for infringement, loss of profits, etc. Damages are not sought in this case, the only legal right sought by plain-
322 tiffs being to have the use of the name in question by defendants prohibited and discontinued, as well as the use of certain emblems and insignia. It is true that the defendants have established an order in this State, which has a numerous membership, and that in its insurance department and by its charities it dispenses a considerable sum of money; and the enforcement of the decree in this case that it shall not continue to do this work in the name it now proposes to employ might work considerable inconvenience and some hardships. While we see no reason why this can not be readily done by the defendants and the work of benevolence and charity they are engaged in be but little impeded, yet even this enforcement would not be granted if the plaintiffs have been guilty of such laches as works an equitable estoppel. The question, therefore, to be determined is upon the assignment that the finding of the jury, that the plaintiffs have not acquiesced in the use of its name by defendants, is contrary to law and evidence and without evidence to support it. The application of the defendants to be incorporated in Fulton county in 1905, which is sought to be enjoined is the first attempt to organize under the laws of this State. This is a secret society holding its meetings behind closed doors. The evidence further discloses that there was no confusion in the delivery of mail until a short time before this suit was instituted. As each order grew in the number of its members and lodges the probability of confusion in the name increased. Besides the element of
323 actual fraud has been considered in cases of trade-marks and labels in dealing with the subject of laches. McIntire v. Pryer, 173 U. S. 38; McLane v. Fleming, 96 U. S. 245; Menendiz v. Holt, 128 U. S. 514.

The court below properly submitted to the jury the question whether under the proof the plaintiffs had been guilty of such acquiescence or laches as would estop them, rightly holding, that the burden was on the defendants to establish such acquiescence as would bar the plaintiffs' right to have relief. As to burden of proof when fraud has been shown, see 18 Am. & Eng. Enc. Law, 118 and cit. In South Carolina it appears that the plaintiff is not required in the first instance to prove his ignorance; the burden to show knowledge being on the defendants. Means v. Foster, 4 S. C. 249; Bank v. Dowling, 52 S. C. 345. Quoting from 18 Am. & Eng. Enc. Law, 119, "There is no artificial, fixed, or determinate rule according to which the defense [of laches] is supplied." "By reason of the difference in the facts, no one case can become an exact precedent for another." "So each case as it arises must be decided according to

its own peculiar circumstances, taking into consideration all the elements which affect the question." "Though the lapse of a few years may be sufficient to defeat the action in one case, a longer period may be held requisite in another, dependent upon the situation of the parties, the extent of their knowledge or means of information, etc." "The cases all proceed upon the theory that
324 laches is not, like limitation, a matter of time, but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties." Citing authorities from numerous State courts, and from United States Courts.

The general rule that laches will bar equitable relief seems to be qualified in trade-mark and trade-name cases, especially in the United States. In England the rule is somewhat strictly applied that the proprietor of a trade-mark forfeits his right to relief against infringment by laches and acquiescence in the use of his mark by another." "In the United States the rule is not so strictly applied, the general rule being that acquiescence or delay in asserting a trade-mark right against an infringer amounts only to a license at will, which can be terminated at any time by a suit for an injunction. If title of the plaintiff is clear, and the infringement plain, an injunction will be granted." 28 Am. & Eng. Enc. Law, 397, citing many authorities both State and Federal. Taking into consideration that the subject of controversy in this case is in the nature of a trade-name, and that the contest is between two secret societies whose relations to each other, during the period from the appropriation of the name by one to the institution of the suit for injunction by the other, was not the usual relation that one person ordinarily sustains to another, we can not say that the finding of the jury that the plaintiffs had not acquiesced in the
325 use of their name by defendants is not supported by the evidence. The suit was filed promptly after the defendants came out into the open and by petition duly published asked the court to give legal sanction to their use of the plaintiffs' name.

4. Authorities are submitted in the brief of the plaintiffs in error on the proposition asserted by them, that "a foreign corporation has no right to object to a domestic corporation being incorporated under the same name." If it be contended that this contest is between the Supreme Lodge Knights of Pythias as a party plaintiff and the defendants Creswill et al., as constituting a domestic corporation, party defendant, the proposition stated is not supported by the record. The defendants are not a Georgia corporation. If the incorporation of the plaintiffs' order and that of the defendants under act of Congress are compared, that of the plaintiff is the older. Moreover, the plaintiffs include not only a corporation but also individual members of a voluntary organization of this State.

5. The plaintiffs in error make what they call two Federal questions in this case. (1) That this is a contest between two Federal corporations, and therefore a Federal question is involved. Complaint is made, that the court below erred in not stating to the jury that the defendants claimed their right to use the name in ques-

tion by authority of the act of Congress, being the general incorporation act of May 5, 1870; and that the finding of the jury
326 and the decree of the court violate their rights under this charter. We do not appreciate the force of this exception. It would not have been proper for the trial judge to submit such a question to the jury. A finding on the point could have thrown no light on the controversy and could not have aided the defendants in any way. This proposition is also not supported by the record. This suit was brought against Creswill et al. as individuals acting and seeking a charter. The Supreme Lodge of the order of which they claim to be members has never been made a party to this case, and is not here asserting any corporate rights. (2) The second Federal question raised is claimed to be predicated on the provision of the fourteenth amendment to the Constitution of the United States: "Nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The pleadings of the plaintiffs in this case contain no reference to the social status of the defendants or their color. The defendants, in an amendment to their original answer, set up that the members of the defendants' order are members of the negro race, and that the order of the plaintiffs is made up of members of the Caucasian race. The able judge trying this case, in his instruction to the jury, made no reference to the matters set up by this amendment on the part of the defendants or to the racial or social status of either the plaintiffs or the defendants. Neither do we think
327 that the defendants, by merely alleging their color, can introduce this subject into the case to make a Federal question or to claim any superior rights thereby. The question of color raised by the defendants certainly does not entitle them to greater rights in the case under the fourteenth amendment to the Federal Constitution than they would have enjoyed had they been members of the same race as the plaintiffs.

Judgment affirmed.

Fish, C. J., and Evans and Atkinson, JJ., being disqualified, Judges R. W. Freeman of the Coweta circuit, H. G. Lewis of the Ocmulgee circuit, and Price Edwards of the Tallapoosa circuit, were designated to sit in their stead. After argument, it appearing that Judge Lewis also was disqualified, counsel agreed that the case be decided by the members of the court which heard it. The judgment is concurred in by all the members of the court as thus constituted.

328 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *March* 14, 1910.

I hereby certify that the foregoing pages hereto attached contain the original writ of error from the Supreme Court of the United States to the Supreme Court of the State of Georgia in the case therein stated and the original citation in said case, also true and

complete copies of all the files and records of this office in said case.

Witness my signature and the seal of the Supreme Court of Georgia hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia. 1845.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Endorsed on cover: File No. 22,074. Georgia Supreme Court. Term No. 235. Charles D. Cresswill, George N. Stoney, George R. Hutto et al., plaintiffs in error, vs. Grand Lodge Knights of Pythias of Georgia, T. H. Nickerson, D. J. Bailey et al. Filed March 23d, 1910. File No. 22,074.

15

Office Supreme Court, U. S.
FILED.
FEB 28 1912
JAMES H. McKENNEY,
Clerk.

No. 235.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1911.

CHARLES D. CRESSWILL et al.,
Plaintiffs in Error,

vs.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA et al.,
Defendants in Error.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF OF PLAINTIFFS IN ERROR.

C. L. PETTIGREW,
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Counsel for Plaintiffs in Error.

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WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF OF PLAINTIFFS IN ERROR.

I.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

Charles D. Cresswill *et al.* as *Grand Lodge Officers* of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia filed a

petition in the Superior Court of Fulton County in the State of Georgia on or about the 1st day of June, A. D. 1906, praying that they, their associates and successors in office be incorporated, not for pecuniary gain, but for the social and benevolent benefit of its members, and their dependent relatives. (Rec., 29.) They ask in their petition to be granted the privilege to organize and charter subordinate lodges in said state and to provide an endowment fund for the payment of death benefits to the widows, dependent relatives or the legal representatives of deceased members.

On the 27th day of June, A. D. 1906, the Grand Lodge Knights of Pythias of Georgia, unincorporated, *et al.* filed a petition in the Superior Court of Fulton County in the State of Georgia, in which they alleged in substance the following (Rec., 21):

On the 19th day of February, A. D. 1864, in Washington, in the District of Columbia, Justice H. Rathbone and his associates organized a society, having for its ultimate object friendship, charity and benevolence, to be known and styled the "Knights of Pythias," and ever since the date of said organization said society has been designated and known as the Order of Knights of Pythias, and is now so designated and known. Subordinate lodges within the territorial limits of the District of Columbia organized on the 8th day of April, A. D. 1864, and submitted themselves to the jurisdiction of a central body known as the Grand Lodge Knights of Pythias of the District of Columbia, and under its authority subordinate lodges were organized throughout the

United States. Several grand lodges were organized and on the 11th day of August, A. D. 1868, a supreme lodge was organized and to which the grand lodges submitted to its jurisdiction.

On the 5th day of August, A. D. 1870, "The Supreme Lodge Knights of Pythias" was incorporated under an act of Congress, approved the 5th day of May, A. D. 1870.

The institution of subordinate lodges begun on the 24th day of September, A. D. 1869, in the State of Georgia by the authority of the Supreme Lodge Knights of Pythias. The Grand Lodge Knights of Pythias of Georgia was organized the 20th day of March, A. D. 1870, by the authority of said supreme lodge.

By the constitutional laws of said Supreme Lodge Knights of Pythias, the Grand Lodge Knights of Pythias of Georgia has full power and authority to institute and charter subordinate lodges in said state, and to revoke charters, and to exercise within said limits all the power and authority for the protection and government of said subordinate lodges and the members thereof, which is not reserved to said Supreme Lodge.

This petition is in the behalf of said Grand Lodge Knights of Pythias and their associates, both individually and as officers of said Grand Lodge Knights of Pythias.

Their order is a secret order; the word Pythias is a distinctive word in the name of the order and distinguishes it from other fraternal orders in Georgia, and the United States, and they have adopted and

have exclusive right to the use of the title aforesaid and to the word "Pythias" and the phrase "Knights of Pythias," which forms a part of said title. The defendants seek to be incorporated under the name and style of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia, and they have never been authorized to associate themselves, nor to make application for charter, either by the Supreme Lodge Knights of Pythias or the Grand Lodge Knights of Pythias of Georgia, or to use the name and style of the Order of Knights of Pythias, or any title which is a further imitation of the name and title of said Grand Lodge Knights of Pythias, and they are not now and never have been members of said Supreme Lodge Knights of Pythias or of any subordinate lodge instituted by its authority.

The name and style set forth in said petition for incorporation is substantially identical with the name and style of the Grand Lodge Knights of Pythias of Georgia, and the words set forth in said petition after the word "Pythias" are surplusage and that said name is an imitation of the name and style of the Grand Lodge Knights of Pythias of Georgia.

They have no right to adopt, or use or to be incorporated in the name and style set forth in their petition for incorporation or any name which is substantially identical with, or a colorable imitation of the name of the Grand Lodge Knights of Pythias of Georgia, and that the use of said name by the parties seeking incorporation and their associates under

such name would be a wrong and injury to them and their associates, and a fraud upon them and the public.

The defendants and their associates have organized a voluntary association in Georgia, under the name and style of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia, and are using and avow it their intention to continue to use said name and under said name have organized subordinate lodges in various cities and towns in Georgia, and authorize said subordinate lodges to use said name, and call themselves, and cause themselves to be denominated Knights of Pythias. That said organization and subordinate lodges have been established some years after the organization of the Grand Lodge Knights of Pythias of Georgia, and long after the said Supreme Lodge Knights of Pythias had organized and had used and become the owner of its said name, and it and its members entitled to the exclusive use of the said name in Georgia. And the Supreme Lodge Knights of Pythias has never authorized them to associate themselves together nor to use said name and style, nor any colorable imitation thereof.

The said use is unauthorized and is a colorable imitation of the name of the Grand Lodge Knights of Pythias of Georgia, and is a wrong and injury to them, their associates and the public. Said associations are using and wearing emblems and insignia identical in color and design with the emblems, and insignia of the Grand Lodge Knights of Pythias of Georgia, and that said use is a wrong and an in-

jury to said grand lodge, its associates and the public. The Grand Lodge Knights of Pythias of Georgia, and the subordinate lodges under its jurisdiction, have been, since their organization, and are now engaged in the work of charity and benevolence and spends large sums of money in the prosecution of the fraternal and benevolent objects of the order and are entitled to the exclusive use of the name it has adopted and owns.

Wherefore, we pray that the defendants be enjoined from incorporating under the name of the Grand Lodge Knights of Pythias of Georgia, or any other name incorporating the word "Pythias" in conjunction with the words "Knights of" or any other name or title substantially identical with, or a colorable imitation of, the Grand Lodge Knights of Pythias of Georgia or from using any such name in the conduct of its affairs, or from instituting subordinate lodges and continuing the existence of subordinate lodges called by such names, or from calling themselves or their associates by such names, or from using emblems and insignia similar to or a colorable imitation of the emblems and insignia used by the Grand Lodge Knights of Pythias of Georgia, and from the use of such by members of subordinate lodges, etc.

Subsequently the plaintiffs amended their petition by making the Supreme Lodge Knights of Pythias a party plaintiff in said petition, setting forth the insurance feature of their organization, and the amounts paid to beneficiaries, and the number of members in the endowment rank, and that defendants have adopted and are using a similar insurance

feature and that the emblems and insignia, both in color and design and inscription, are the same, and adopting the prayers of the original petitioners. There were demurrers filed by defendants, both general and special, but the demurrers were never passed upon formerly by the court. (Rec., 32.)

Charles D. Cresswill *et al.*, answering said petition of plaintiffs and for want of sufficient information neither affirmed nor denied the narrative or historical part of said petition as stated in paragraphs 1, 2, 3, 4, 5 and 6 thereof.

They filed their petition to incorporate, and that they received no authority whatever from the plaintiffs.

They deny that the name and style set forth in defendant's petition for incorporation are substantially identical with the name and style of the Grand Lodge Knights of Pythias of Georgia, or is an imitation of the name and style of said Grand Lodge Knights of Pythias of Georgia.

They claim that they and their associates have the right and authority to adopt and to use and to be incorporated in the name and style set forth in their petition for charter and that such name and the use thereof would be no wrong or injury to the plaintiffs or their associates or a fraud upon them or the public and after denying the material allegations in paragraphs 10, 11, 12 and 13 of plaintiffs' petition further answers and says:

The Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa was incorporated October 10, 1889, by virtue of the act

of Congress of the United States approved May 5, 1870, and organized under said charter throughout the United States and other countries in order to carry out their purpose of a charitable and fraternal organization.

The said corporation was reincorporated, and by said reincorporation become the successors of the previous one, on the 14th day of December, A. D. 1903, in order that they might more perfectly comply with the laws of the various states relative to fraternal societies doing business therein, which incorporation was under the name of The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, and attach copies of said incorporation and reincorporation to their answer. This corporation has been in active work ever since the 10th day of October, A. D. 1889, the date of its incorporation, and has extended itself over the United States and in different countries of the world, and has established subordinate lodges, and had interfered with no other organization of like character, or any other character whatever, and that its sole purpose in asking incorporation under the laws of Georgia was to form a more perfect union among the subordinate lodges with a governing head which should have authority and be amenable to the state laws of Georgia, and be able better to enforce obedience among its several members and lodges.

The signs, symbols, emblems, insignia and other paraphernalia have been adopted by the said corporation honestly and fairly and it has a perfect right thereto.

The defendants subsequently filed their amended answers showing the following (Rec., 47):

The Order of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia was established by and among colored people alone, which includes the negro race, and is organized for the purpose of disseminating friendship, charity and benevolence. The supreme lodge of the said order was incorporated on October 10, A. D. 1889, under the act of Congress approved May 5, A. D. 1870, and the said corporation as organized began immediately and continued to organize branches in different states of the United States until its organization without breaking its continuity under said act of Congress reincorporated, December 14, A. D. 1903, under the name of The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia and has established branch lodges covering many states, to-wit: Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Iowa, Indian Territory, Kansas, Kentucky, Louisiana, Massachusetts, Rhode Island, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma Territory, Eastern Pennsylvania, Western Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

These organizations have been in working order for many years beginning in the State of Mississippi *March* 26, *A. D.* 1880, the date of the organization of the order at Vicksburg. The said order in the jurisdiction of Georgia was organized and began work in *June*, *A. D.* 1886, and has continued ever since. That its membership in the United States numbers 80,747 and in Georgia 11,805.

This order has never attempted to confuse its order with that represented by the plaintiffs and as a matter of fact there never has been any confusion or mistaking the plaintiffs' order for that of the defendants. That the field of operation of the two orders is absolutely different, one being confined to the white race and the other to the colored race.

There never has been an application for membership by a Caucasian in the defendants' order. There is no member of the negro race in the order represented by the plaintiffs. There has been nothing done by defendants' order to lead the public to suppose they were the order represented by the plaintiffs.

All official proceedings of defendants' order distinctly notifies the public that this order was not the same as plaintiffs' order; that no one could think the two orders were the same; or that one might become a member of the one order when they joined the other; that the complete operation of the two orders is absolutely different, one being confined to the white race, the other to the colored race.

The order represented by the defendants has been in operation since *March* 26, *A. D.* 1880, and under the jurisdiction of the supreme lodge as chartered since *October* 10, *A. D.* 1889, publicly and through the knowledge of all mankind, and it would be inequitable and unjust for the plaintiffs to maintain this suit on account of the lapse of time, and defendants plead the plaintiffs' laches in bar of any equitable relief.

The cause came on for hearing and the court entered the following order:

"After hearing the evidence and argument of counsel it is ordered that the injunction be denied, and the restraining order heretofore granted be revoked." (Rec., 49.)

The plaintiff below, defendants in error, brought the case by bill of exceptions to the Supreme Court of the State of Georgia.

The judgment of the court below was by said court affirmed with directions that the facts be tried by a jury, *Grand Lodge Knights of Pythias of Georgia* v. *Creswill*, 128 Ga. 775.

Whereupon, the case came on to be tried before a jury as directed by the Supreme Court of Georgia, 128 Ga., *supra*, on the 25th day of May, 1908, upon the issues made by the pleadings, at which trial the presiding judge propounded the following questions to the jury to be answered by their verdict with the answers of the jury thereto, are as follows:

QUESTIONS PROPOUNDED TO THE JURY AND ANSWERS.
(Rec., 49.)

Q. 1. Is the proposed corporate name of the defendants an infringement on the name of plaintiffs' association?

A. Yes.

Q. 2. If it is such infringement, would it affect or injure plaintiffs in any property right? If so, what? If it is such infringement, would that affect or injure the plaintiffs in any property right? If so, what property right?

A. Yes, in name.

Q. 3. If so, is there any fraudulent purpose or design in so infringing?

A. Yes, there is.

Q. 4. Are any of the emblems or insignia of defendants the same as any of those by plaintiffs, and if so, does such use injure plaintiffs in any property right?

A. Yes.

Q. 5. Have the plaintiffs acquiesced in the use by defendants of the same insignia, and if so, how long?

A. No.

Q. 6. Is it true that since the organization of the order represented by petitioners, and its introduction into the State of Georgia, it has been called the Order of Knights of Pythias, and that its members have been known as Knights of Pythias or Pythian Knights indifferently?

A. Yes.

Q. 7. Is it true that "Pythias" is the distinctive word in the name of the order represented by petitioners, which ordinarily distinguishes it from the name and style of other fraternal orders in the State of Georgia and in the United States?

A. Yes.

Q. 8. Is it true that the name set forth in defendants' petition for incorporation is substantially identical with the name and style of your petitioners, the Grand Lodge Knights of Pythias of Georgia?

A. Yes.

Q. 9. Is it true that the name set forth in defend-

ants' said petition for incorporation is a colorable imitation of the name and style of your petitioners, the Grand Lodge Knights of Pythias of Georgia?

A. Yes.

Q. 10. Is it true that the use by defendants and their associates of the name under which they are seeking incorporation would work a fraud upon your petitioners and their associates and the public, in that the name under which defendants propose to incorporate is a colorable imitation of the name of petitioners?

A. Yes

Q. 11. Is it true that the defendants cannot show any organization of any kind until 1880, and until long after the Grand Lodge Knights of Pythias of petitioners was organized in the State of Georgia?

A. Yes.

Q. 12. Is it true that the use of the word "Pythias" immediately in conjunction with the words "Knights of" in the name under which defendants and their associates are seeking incorporation is a colorable imitation of the name of your petitioner, the Grand Lodge Knights of Pythias of Georgia?

A. Yes.

Q. 13. Is it true that defendants of the "Supreme Lodge of Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia" are wearing emblems and insignia identical in color, design and lettering with the emblems and insignia of petitioners, the Grand Lodge Knights of Pythias of Georgia; and is it true that the wearing and use of

such insignia and emblems work a fraud upon either petitioners or their associates, or the public?

A. Yes.

Q. 14. Have the defendants used the name Knights of Pythias or the letters K. of P. without any affix or suffix thereto?

A. Yes.

After hearing the evidence, the argument and charge of the court, the jury returned a verdict in favor of the plaintiffs (defendants in error) upon each and every question propounded by the court, as above set forth.

A motion for a new trial was made upon the usual statutory grounds (Rec., 53), which was afterwards amended (Rec., 54) upon various grounds, as appears in said amended motion, which amended motion is as follows:

4.

Because the answer of the jury to the first question propounded is contrary to law, without evidence to justify it and contrary to the charge of the court on that subject, which charge was as follows: "An infringement upon a trade name would be such colorable imitation of the name that the general public in the exercise of reasonable care might think that it was the name of the plaintiffs," and because there was no evidence of any effect or opinion created upon the general public.

5.

Because the answer of the jury to question No. 2 is contrary to law and without evidence to support it and because the question is not there answered, inasmuch as it merely assumed that the name is a property right without distinguishing the specific property right called for by the question and because, under the law, some definite property right and injury to property has to be shown, and not merely the empty shadow of the name, and because there is no evidence of any property right involved or infringed upon by the defendants in the use of such name; and because it is contrary to the charge of the court upon that subject, to-wit: "if they have no property right in the name under the instructions which I have given you and the evidence, you will answer this question, No."

6.

Because the answer of the jury to the third question is contrary to law, and contrary to the evidence and without evidence to support it, and contrary to the charge of the court on that subject: "fraud upon the part of the defendants would be a use of the name of the plaintiffs or an infringement thereof with the intent to make the impression upon the general public that their association and plaintiff's associations were the same general order," and contrary to the said charge of the court because there is no evidence of said intent, nor is there any evidence of any impression upon the general public and the said answer is also contrary to the following charge of the court: "that they should determine whether

or not this infringement, if there has been any infringement had a fraudulent purpose or design on the part of the defendants," inasmuch as there is no evidence of any such fraudulent purpose or design.

7.

Because the answer of the jury to the fourth question is contrary to law, and contrary to the evidence, there being no evidence of any injury to the plaintiffs in any property right.

8.

Because the answer of the jury to the fifth question is contrary to law and contrary to the evidence, the evidence being undisputed that the defendants have used their name and insignia since the year 1880, and in the State of Georgia since the year 1886 and to the knowledge of the plaintiffs and with their acquiescence; and contrary to the charge of the court on this subject, as follows: "and if they knew of that use and took no steps to prevent it, that would be acquiescing," and because this answer fails to show how long their acquiescence continued, whereas, from the undisputed testimony it is shown that their acquiescence continued from 1880 until the time of the filing of this suit, and still continues all over the United States, except in the State of Georgia.

9.

Because the answer to the sixth question is contrary to the evidence and without any evidence upon the subject, and because said answer is not called for

by the pleadings in the case and is of no value for the foundation of a judgment in this case.

10.

Because the answer to question seven is without evidence to support it, nor is it called for by the pleadings, nor is it such an answer as a judgment could be founded on in this case.

11.

Because the answer to question eight is contrary to law, contrary to the evidence and without evidence to support it, and contrary to the charge of the court, because the court practically charged the jury that there was no substantial identity in the names, but authorized them to consider this question "only with reference to colorable imitation," which instruction is found in the special instructions under question eight.

12.

Because the answer of the jury to question nine is contrary to law and to the evidence and without evidence to support it and contrary to the charge of the court on that subject, as follows: "an infringement upon a trade name would be such a colorable imitation of the name that the general public in the exercise of reasonable care might think that it was the name of the plaintiffs," and also especially because there was no evidence that same name was a trade name or of any effect upon the general public, or as to what the general public might think, and because it is contrary to the following charge, to-wit:

"you are to answer that question from the evidence in the light of those instructions."

13.

Because the answer of the jury to question ten is contrary to the evidence and without evidence to support it, contrary to law and contrary to the following charge of the court upon the subject, to-wit: "fraud upon the part of the defendants would be the use of the name of the plaintiffs or an infringement thereof with intent to make the impression upon the general public that their association and the plaintiffs' association were the same general order," and because there is no evidence of such intent and no evidence of any impression upon the general public and no evidence of such impression that the plaintiffs and defendants belong to the same general order.

14.

Because the aswer to question eleven is contrary to the evidence. The evidence shows that the defendants organized long prior to 1886, and that they organized in the State of Georgia in 1886, and because the answer of said question is of no foundation value for the judgment to be rendered in this case, and because said answer does not in any way disprove acquiescence on the part of the plaintiffs.

15.

Because the answer to question twelve is contrary to law, contrary to the evidence and contrary to the charge of the court given above as to a colorable imi-

tation, and is without any value to form a judgment, and because the said question is a repetition of two former questions upon the same subject.

16.

Because the answer to question thirteen is contrary to law, contrary to the evidence and contrary to the charge of the court upon the subject, to-wit: "fraud upon the part of the defendants would be the use of the name of the plaintiffs or the infringement thereof with intent to make the impression upon the general public that their association and the plaintiffs' association were the same general order," and because there is no evidence of said intent, no evidence of the impression upon the general public, no evidence of fraud upon petitioners, their associates or the public.

17.

Because the answer to question fourteen is contrary to law, contrary to the evidence and without any value to form a judgment in this case, inasmuch as such use has no effect upon the right of the defendants to their full name as set out in their pleadings and in the evidence, and there is no evidence that said use was ever authorized by the defendants and that the answer to said question could have no bearing upon the defendants' rights as set out in this case.

18.

Because the answer to questions six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen are

all immaterial and covered by the first five questions in this case and so have no weight in forming a judgment herein.

19.

Because the answer of the jury to questions one, two, three, four, eight, nine, ten, twelve and thirteen are contrary to law, contrary to the rights of the defendant under the act of Congress of May 5, A. D. 1870, and under their charter rights granted under said act of Congress and of the authority conferred thereby.

20.

Because the answers of the jury to questions one, two, three, four, eight, nine, ten, twelve and thirteen are contrary to law, to the constitution of the United States and the amendment fourteen (14) thereto and the following clauses thereof: "nor shall any state deprive any person of life, liberty or property without due process of law" and "nor deny to any person within its jurisdiction equal protection of the laws," inasmuch as all the evidence upon which these answers are founded is illegal evidence and such as applies entirely to the exclusion of the defendants as a colored race from the organization and maintenance of an association not otherwise called in question as contrary to law.

21.

The movants respectfully urge the following grounds of amendment to their motion for new trial:

That the court erred in its charge to the jury,

when stating defendants' contentions, in not stating that the defendants claimed their rights under a charter granted by the authority of the act of Congress dated 5th day of May, A. D. 1870, under which the defendants and such like associations were chartered by authority of the act of Congress.

22.

That the court erred in the following charge to the jury: "having thus associated themselves, they would be authorized to use a name by which they would be known; and under certain circumstances they would be protected in the use of that name," in that by the use of the words "under certain circumstances," and without defining what circumstances, the jury would be left in doubt, especially in cases like the present, as to the rights of the parties.

23.

Because the court erred in charging as follows: "words or phrases which are arbitrary and fanciful, as applied to an association of persons for legitimate purposes, may constitute a valid trade name," in that the words "valid trade name" are improper and misleading words, and do not contain the law as to fraternal organizations.

24.

Because the court erred in the following charges: "an association first appropriating and using an arbitrary or fanciful name acquires a property right in that name" in that by the use of the words "prop-

erty right'' it was erroneously intimated and the jury might erroneously determine that the property right involved in the question submitted to them might be only in the bare name, without any additional property or property right attached thereto, or exercisable with the same.

25.

Because the court erred in the following charge: ''if an association of persons have acquired by appropriation and use a property right in a name that is arbitrary and fanciful, no other association of persons would have the right to fraudulently copy or infringe upon that name,'' in that by the use of the words ''property right'' the court assumed and the jury were led to believe that any fanciful name, regardless of whether it was attended with a legal property right or not, would be sufficient for the right of recovery in this case.

26.

Because the court erred in charging as follows: ''an infringement upon a trade name would be such a colorable imitation of the name that the general public in the exercise of reasonable care might think that it was the name of the plaintiff's,'' in that by the use of the words ''trade name'' the court applied a wrong standard for adjustments of the rights between fraternal associations, because in injury to trade or a trade name always implies a property right, whereas, as between associations not engaged in trade, injury to a property right has to be proved.

27.

Because the court erred in charging the jury: "fraud upon the part of the defendants would be a use of the name of the plaintiffs, or an infringement thereof, with the intent to make the impression upon the general public and their association and the plaintiffs' association were the same general order," in that there can be no fraud unless there is an injury done and the said impression upon the public can only do injury by depriving the plaintiffs of members, who, instead of joining it, would join the defendants, or by such impression upon the general public that would draw business, membership or other advantage to the defendant which would be otherwise intended for the plaintiffs, or that the impression upon the general public would damage the plaintiffs because the defendants belonged to the negro race. Further, because if the intent to make the impression upon the general public that the defendants' association and the plaintiffs' association were of the same general order, constitutes a fraud upon the plaintiffs without any property right involved and without any other injury but the mere fact of their identity, then this charge deprives the defendants of the equal protection of the laws, as guaranteed to them by the fourteenth (14th) amendment of the constitution of the United States.

28.

Because the court erred in charging the jury: "if the association first appropriating and using a name have a clear right to the use of the name, its sub-

sequent use by another association, knowing of this right, would be presumed by the law to be fraudulent," in that, because the name of the defendants is not the same as the name of the plaintiffs, and there is no evidence of the knowledge by the defendants of any clear right on the part of the plaintiffs to the use of its name; and in that this charge ignores the defendants' right to use its name conferred upon it by authority of the act of Congress; and that such use would be a fraud.

29.

Because the court erred in charging as follows: "an infringement of a trade name would be presumed to be fraudulent if the association first appropriating and using it have a clear right to its use, and the association infringing upon the name knew of this right," in that the rights under a trade name are not the same as the rights of the parties in this case, and in that the conferring of the defendants' name upon it by authority of the act of Congress and of the formation of it as a corporation under said act cannot be presumed to be fraudulent.

30.

Because the court erred in the special instruction under the first question in charging: "I have instructed you what an infringement is," in that the court only instructed the jury upon what would be the infringement of a trade name and not an infringement of the name of a fraternal association.

31.

Because the court erred in not charging the jury that the defendants' name was not an infringement, inasmuch as there was no evidence of infringement.

32.

Because the court erred in the special instruction under question two: "the court has instructed you as to when a name will become a property right, and you will look to the evidence and see whether or not the name of the plaintiffs in this case is as to them a property right," in that the court did not instruct the jury as to when a name will become a property right nor did the court instruct the jury as to when names of fraternal associations are so attached to property or property rights as to give them a property right in the name, and, further, because the whole instructions under question two misdirected the jury, as that question calls for some property outside the name, but connected with the name so as to make the name valuable, and because the court practically tells the jury that they should answer the question by the words: "in using the name," and the whole language of the court as to property right, in the name, means nothing more than having a right to its own name and make this whole question meaningless.

33.

Because the court erred in reiterating its instructions as to fraud in its special instructions under question three.

34.

Because the court erred in not charging the jury under question four as to what was meant by the phrase: "does such use injure plaintiffs in any property right," and in not explaining that in benevolent associations the test is as to whether one order would be damaged by depriving it of members who would otherwise join it, and whether one order would injure the business, membership or other advantage intended for the other.

35.

The court erred in submitting questions six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen to the jury, the same being covered by the previous questions and being immaterial.

36.

Because the court erred in submitting the said sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth questions without charging the jury upon the law and explaining the meaning of each and every one to the jury.

37.

Because the court should have charged the jury as to the conflict of rights in the name between the plaintiffs' and defendants' associations and not have confused them and made them identical with trade associations. The court should have charged that there must be some property right involved, and must not be merely a right to a name, but some prop-

erty right in a name or some property right connected with a name which would give the name a value; that the right must consist in something else besides reputation and feeling; that the right would not be merely wrong or right in the abstract, but should be a right the violation of which makes injury and damage.

38.

Because the court erred in failing to charge the jury that, as to benevolent associations, the test is whether by the use of the name the one corporation would be damaged by depriving it of members who would otherwise join it, and that the name given should not be so similar as to draw business, membership or other advantages intended for the other.

39.

Because the failure of the court to charge the jury that the defendants claim the right to their name under a charter from the District of Columbia by virtue of the act of Congress, approved May 5, A. D. 1870, as set out in the twenty-first ground of this motion, and the answers of the jury to questions one, two, three, four, eight, nine, ten, twelve and thirteen as set out in the nineteenth ground of this motion, and the decree of the court rendered upon said verdict, violate defendants' rights under this charter, and violate Article 4, Section 1 of the Constitution of the United States, which declares: "full faith and credit shall be given in each state to the public arts, records and judicial proceedings of every other state."

40.

Because the decree entered upon the verdict of the jury in this case is in violation of a law of the United States, to-wit: the act of Congress, approved May 5, 1870, known as the General Incorporation Act.

The court below overruled the motion for a new trial on all the grounds, and defendants (plaintiffs in error) brought the case to the March term, A. D. 1909, of the Supreme Court of the State of Georgia by writ of error. The Supreme Court of the State of Georgia on the 21st day of February, A. D. 1910, rendered its judgment thereupon affirming the judgment and decree of the lower court. On March 14, A. D. 1910, on the petition of plaintiffs in error, a writ of error was allowed to the Supreme Court of the State of Georgia. All the parties herein exist and obtained whatever corporate rights they have from acts of Congress.

I-A. The Charters of the Supreme Bodies.

On the 5th day of August, A. D. 1870, an unincorporated body having existed since February 19th, A. D. 1864, and known as the Supreme Lodge Knight of Pythias, was incorporated under Act of Congress approved May 5th, A. D. 1870, as "The Supreme Lodge Knights of Pythias of the World," and the limitation of their existence under said act was for the period of twenty years. The said articles of incorporation expired on the 5th day of August, A. D. 1890. A Supreme Lodge Knights of Pythias existed from that date, to-wit, the 5th day of August, A. D. 1890, until the 29th day of June, A.

D. 1894, as a voluntary or unincorporated organization. On the 29th day of June, A. D. 1894, a voluntary organization became incorporated under a special Act of Congress, and thereby became without the provisions and rights of another previously existing corporation under Act approved May 5th, A. D. 1870, and this corporation did not succeed to the rights of a previously existing corporation of Knights of Pythias by the same name. The existence of the corporation as non-constituted by defendants in error began the 29th day of June, A. D. 1894. (Rec., 77.) *Supreme Lodge Knights of Pythias* v. *Improved Order Knights of Pythias*, 113 Michigan, 140.

The incorporation of the Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa was on the 10th day of October, A. D. 1889, after it having existed as an unincorporated body since March 26th, A. D. 1880. The reincorporation was on the 14th day of December, A. D. 1903, and was under the name of The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, and were the successors of the old corporation of October 10th, A. D. 1889. (Rec., 39.) These charters were obtained under the Act of Congress approved May 5th, A. D. 1870.

Cresswell and other plaintiffs in error were the *officers* of the Grand Lodge, Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia, and all were subordinate to and a part of the reincorporation of December 14th, A. D. 1903, the successors of the incorporation of October 10th, A. D. 1889 (Rec.,

40), and all of plaintiffs in error rights are derived from and subsisting in the charter rights of their supreme body as aforesaid. (Rec., 139.) The corporate existence of the supreme body, which Cresswell and others, the plaintiffs in error, as *officers*, represent and are a part of, began on the 10th day of October, A. D. 1889, and the continuity of their existence has remained unbroken. Neither of the parties to this suit were incorporated under the laws of the State of Georgia.

I-B. Rights of Plaintiffs in Error Acquired Under Act of May 5th, A. D. 1870.

Plaintiffs in error acquired certain rights under the Act of May 5th, A. D. 1870, by the incorporation of October 10th, A. D. 1889, and reincorporation of December 14th, A. D. 1903, as aforesaid, because they were acting as officers and members (Rec., 29), severally and jointly of a corporate body that they were subordinate to and a part of, and all of plaintiffs in error's rights are derived from and subsisting in the charter rights of their supreme body, the said corporations.

The provisions of the Act of May 5th, A. D. 1870, did not preclude the incorporation of plaintiffs in error's Supreme body, October 10th, A. D. 1889, by the name as aforesaid, although a corporation of August 5, A. D. 1870, was then in existence, which expired August 5, A. D. 1890.

The corporation of the defendant in error corporation is "The Supreme Lodge," etc., incorporated by special Act of Congress June 29th, A. D.

1894, and only members of the said Supreme Lodge are a part of said corporation, while the corporation of the order of plaintiffs in error is "The Knights of Pythias," etc., reincorporated December 14th, A. D. 1903, succeeding the incorporation of October 10th, A. D. 1889 (Rec., 39), and all of the members of the order are members of said corporation. These names are not similar, nor in the language of the Act of Congress May 5th, A. D. 1870, is not the "name or style the SAME," etc.

On the 14th day of December, A. D. 1903, the date of the reincorporation of the supreme body of the plaintiffs in error, this corporation was the only organization or corporation, with reference to the parties hereto, coming under the provisions of the Act approved May 5th, A. D. 1870; the defendants in error corporation was not under said act, as they had elected to be incorporated by special Act of Congress June 29th, A. D. 1894, and did not succeed the corporation of August 5th, A. D. 1870, and therefore could not claim any rights under Act approved May 5th, A. D. 1870, nor to the detriment of any corporation or its subordinates thereto, when they claimed rights under said Act of May 5th, A. D. 1870.

Under Article 4, Section 1 of the Constitution of the United States, full faith and credit should be given to said Act of May 5th, A. D. 1870, and the rights claimed by plaintiffs in error, because of their supreme body, having been incorporated under said Act, and when they derived their rights from their supreme body as *officers*. Articles of incorporation were incorporated in their answer, and their rights

were claimed by virtue of they being a part of said supreme body as aforesaid.

I-C. The Property Rights of Plaintiffs in Error Under the 14th Amendment.

The plaintiffs in error and the defendants in error organizations have existed together in the State of Georgia for a period of twenty years before the bill for injunction was filed, June, 1886. (Rec., 48.) There had been no confusion between their orders, or members thereof; no ordinary person using ordinary care mistook one for the other, and in fact one's membership was confined to white persons and the other to negroes; plaintiffs in error's organization had contracted with its membership for the payment of stipulated amounts at death, as a beneficiary or endowment payment; the members of and the plaintiffs in error's order had adopted emblems, pins, charms, etc., which were purchased in the open market, and they could be and was purchased in any first-class jewelry store, and the said articles of adornment were not patented nor copyrighted; the uniform, badges, etc., are manufactured by different concerns throughout the country and are for sale without restriction (Rec., 107) and the objections to the plaintiffs in error' and their organization were because of them being negroes and "there is this natural antipathy of the two races one to the other." (Rec., 70.) (The evidence of the solicitor for the defendants in error.)

The injunction prayed for and made perpetual was not only to prevent the incorporation of the plaintiffs in error, but to deprive them of their name

that they had used for twenty years in the State of Georgia, and to which the defendants in error had not the prior and exclusive right; it also deprived plaintiffs in error and their organization of their property and prevented them and it from carrying out their legal obligations to the members, and other creditors, and would practically confiscate the real and personal property of plaintiffs in error, in that it would be depreciated and without value. (Rec., 51.) There was no confusion (Rec., 62), nor sufficient evidence to justify such finding, but they were negroes. This is prohibited by the Fourteenth Amendment to the Constitution of the United States, and such acts, whether judicial or otherwise, comes within the purview of said amendments.

II.

SPECIFICATION OF ERRORS RELIED UPON.

1. That the Supreme Court of the State of Georgia erred in affirming the judgment of the Supreme Court of Fulton County in overruling the following grounds of a motion for a new trial shown in the records before said Supreme Court of Georgia, on the grounds set out therein; said grounds being specified in the petition for writ of error in this cause, and numbered 19, 20, 21, 27, 28, 29, 39 and 40 in the record in this cause before the Supreme Court of the State of Georgia.

2. That the Supreme Court of the State of Georgia erred in adjudging and deciding "the mere addition to the distinctive name of the defendants' association of the words 'of North America, South

America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia,' cannot be declared as a matter of law, to constitute such a difference as to make the name so altered free from the complaint of being an infringement, or to render the finding of the jury that there was fraudulent infringement contrary to law."

3. That the Supreme Court of the State of Georgia erred in adjudging as follows: "It appears from the testimony that both the plaintiffs' order and the defendants' order took out articles of incorporation under the general Act of Congress of May 5th, 1870, which makes provisions for the suing out of articles of incorporation by persons desiring to associate together for any lawful purpose. (16 U. S. Statute at Large, 101.) It will be remembered that the plaintiffs' order filed its articles on August 5, 1870, and the defendants' order on October 10, 1889. This Act contains the following provisions relative to the name to be taken by the proposed corporation: The provisions of this Act shall not extend to nor apply to any association or individual who shall in a certificate filed with the registrar, use or specify a name or style the same as that of any previously existing incorporated body in the District of Columbia. Counsel for defendants contend that the name they are seeking to perpetuate by incorporation is not substantially the same or a colorable imitation of plaintiffs' name; they say they make the name essentially different by the adding the names of the continents, North America, South America, Europe, Asia, Africa and Australia. We do not agree with this contention of the defendants, if the

name of the continents thus used as suffixes were employed in every instance where the order is designated."

4. That the Supreme Court of the State of Georgia erred in adjusting and deciding "this was not a suit between two corporations chartered in the District of Columbia under the general incorporation Act of May 5, 1870; the incorporated Supreme Lodge of plaintiffs' association was, but that the defendants' association was not; so the assignment of error based upon the contrary hypothesis was without merit."

5. That the Supreme Court of the State of Georgia erred in adjudging and deciding: "Where the plaintiffs did not allege or base their proceedings on the fact that the defendants were colored persons, and the judge, in charging the jury, made no reference to the recital or social status of either plaintiffs or defendants, but submitted the issue as to the rights of the parties without reference to race or color and the evidence authorized the finding against the defendants regardless of any consideration of their color, it cannot be held that such finding was in conflict with the provisions of the Constitution of the United States, which declares: 'Nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'"

6. That the Supreme Court of the State of Georgia erred in adjudging and deciding: "No ground of the motion for a new trial requires reversal."

BRIEF OF THE ARGUMENT.

III-A.

PARTIES TO THIS SUIT.

MAY IT PLEASE THE COURT:

This is a suit between Chas. D. Cresswell *et al., officers* of the Grand Lodge, Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia. (Rec., 24, 29.) Said Grand Lodge is a subordinate body to, and a part of, The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, reincorporated on the 14th day of December, A. D. 1903, under Act of Congress of May 5th, A. D. 1870 (Rec., 104), being a successor to the corporation of The Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa, of date the 10th day of October, A. D. 1889, under Act of Congress of May 5th, A. D. 1870, and all of the plaintiffs in error's rights are derived from and subsisting in the charter rights of their supreme body aforesaid. (Rec., 41.) Plaintiffs in error, and The Supreme Lodge Knights of Pythias incorporated on the 29th day of June, A. D. 1894, under a special Act of Congress, the Grand Lodge Knights of Pythias of Georgia, unincorporated, and T. H. Nickerson *et al.* as individuals, defendants in error. (Rec., 77.)

III-B.

THE STATUS OF THE PARTIES.

The Supreme Court of Georgia held that the suit at bar was not a suit between two corporations, but between Cresswell *et al.* as individuals. (Rec., 156.) The said court held in the same opinion, "It will be remembered that the plaintiffs' order (defendant in error) filed its articles on August 5, 1870; (the plaintiffs' order, defendant in error, articles were granted June 29, 1894); and the defendants order October 10, 1889," and the said claim of Cresswill *et al.* as to their relation to another body was passed upon by said court. It was further held by said court, "If the incorporation of plaintiffs' order (defend ant in error) and that of defendants' (plaintiffs in error), under Acts of Congress are compared that of the plaintiffs is the older. This is clearly erroneous as shown by the record. (Rec., 155.) It is claimed that Cresswill *et al.* had certain rights under Act of May 5th, A. D. 1870, and said right under said Acts were passed upon again by the Supreme Court of Georgia where the said court further held:

> "It appears from the testimony that the plaintiffs' order (defendants in error) and the defendants' order (plaintiffs in error) took out articles of incorporation under general Act of Congress of May 5th, 1870." (Rec., 151.)

The record does not show that the "plaintiffs'" order (defendants in error) took out articles of incorporation under general Act of Congress of May 5, 1870, but special Act of Congress June 29th, A. D. 1894. The holding that Cresswill *et al.* were parties

individual; this was not a suit between two corporations; and that the plaintiffs' order and defendants' order took articles of incorporation under Act of May 5, 1870, appears to be conflicting, and not borne out by the record.

By reference to the case of the *Grand Lodge Knights of Pythias* v. *Cresswill,* 128 Georgia, 775, in this same cause, the court held that parties to this suit were the proper parties; again, if the defendant in error corporation had the right as a foreign body to come in the State of Georgia to protect its subordinate bodies unincorporated, why not the subordinate body and members residents of Georgia of plaintiffs in error's corporation be entitled to the protection of the supreme body incorporated without the state? It will be remembered that it is further contended that Cresswill *et al.* represented as officers were a part of a foreign body (The Knights of Pythias of North America, etc., reincorporated December 14th, A. D. 1903), and only wanted to domesticate themselves, for the better government of their members, and be amenable to the state laws of Georgia. If the Supreme Court of Georgia is correct in its opinion, it would virtually declare invalid the acts of an incorporation under a federal statute which plaintiffs in error received their rights; practically confiscates their property, because it would become valueless, and their real property involved, and the order would have to cease doing business, because of a collateral attack, when the only question could be, "Shall Cresswill *et al.* incorporate?" The creation of a body by a federal act infers a power to sustain. *McCullough* v. *Maryland,* 4 Wheat. 426.

The organization that was incorporated August 5th, A. D. 1870, was "The Supreme Lodge Knights of Pythias of the World," a different name and a distinct organization to that of defendants in error, "The Supreme Lodge Knights of Pythias," which was incorporated June 29th, A. D. 1894, as an entirely new body. It will be noted that plaintiffs in error's order is incorporated under the Insurance Act of District of Columbia, Act of Congress. (Rec., 114.) There can be no contention that a special Act of Congress is paramount to a general Act. Whether incorporated under general laws or special Act, the charter and articles of incorporation determine the powers with which a mutual benefit corporation is invested. The only difference between a corporation organized under a general law and one created by special statute is that in the former the certificate of the promoters is looked to, while in the charter of the latter the special Act ascertains the scope of the powers of the corporation. The rule for construing instruments must necessarily be the same.

Rockhold v. *Canton Masonic Mut. Ben. Soc.*,
129 Ill. 455.
3 Am. & Eng. Enc. of Law, 1048.

III-C.

THE ACT OF CONGRESS OF MAY 5TH, 1870.

Chas. D. Cresswill *et al.*, plaintiffs in error, petitioned as officers of the Grand Lodge, Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia, to be incorporated (Rec., 29) and were to be gov-

erned by the laws of the Knights of Pythias aforesaid. (Rec., 30.) While the name itself indicated that it was not the parent body, their answer set up the specific facts of the incorporations of the supreme body and made proper copies of articles of incorporation a part of their answer. (Rec., 38.)

The defendants in error cannot claim any rights under the Act of Congress May 5th, A. D. 1870, because they are not nor ever were incorporated under said Act, but a special Act of Congress June 29th, 1894. (Rec., 77.)

The name of the organization incorporafed August 5th, A. D. 1870, under Act of Congress May 5th, A. D. 1870, was "The Supreme Lodge Knights of Pythias of the World." The name of the organization incorporated June 29th, A. D. 1894, under special Act of Congress, is "The Supreme Lodge Knights of Pythias," and when they incorporated under said special Act, the organization of plaintiffs in error, under which plaintiffs in error claim rights through their supreme body and for themselves, was and had been incorporated since October 10th, A. D. 1889, nearly five years previous.

When the plaintiffs in error were incorporated under Act of May 5th, 1870, there was an organization incorporated under said Act and had been since August 5, 1870.

This corporation never complained, and they had no such rights, and when this corporation had become extinct by limitation, the said corporation which Cresswill *et al.* as officers and members were a part of and in which their rights subsisted, became the sole corporation under Act of May 5, 1870.

Let it be presumed that defendants in error as a corporation was organized the 5th day of August, A. D. 1870, and continued until after the corporation of the 10th day of October, A. D. 1889, which is not true, what prevented this incorporation of October 10, 1889? The Supreme Court of Georgia presumed that the corporation of June 29th, A. D. 1894, was the continuation of the corporation of August 5th, A. D. 1870, and therefore the persons who incorporated October 10th, A. D. 1889, did so with question.

The part of said Act of May 5th, A. D. 1870, to which is referred is, "Provisions of this chapter shall not extend or apply to any association or individual who shall in the certificate file with the recorder of deeds use or specify *a name and style the same as* that of a previous existing incorporated body." (Rec., 151.) It will be observed that the words complained or are "A name and style the same as." This Act does not go as far as some recent Acts using the words "a colorable imitation," but "the same as." If this were the true interpretation, the defendant corporation in error could not complain, because they were incorporated subsequently and under a different Act.

An amendment to the articles of incorporation of August 5th, A. D. 1870, could not extend the limitations of an Act of Congress, which provides expressly the period of twenty years of existence.

The articles of incorporation of August 5th, A. D. 1870, were amended the 5th day of October, A. D. 1875, and the 7th day of March, A. D. 1882. The articles of amendment of October 5th, A. D. 1875,

Section 7 (Rec., 74, 76) shows, "And it is hereby declared that all and singular the parts of the incorporation of August, 1870, not altered by this supplemental paper, are hereby ratified and reaffirmed, and that the said Supreme Lodge shall be and remain a body corporate for the term of twenty years," and the amendment of March 7th, A. D. 1882, Section 9, shows about the same.

The Supreme Courts of Michigan has held that the Supreme Lodge Knights of Pythias is a fraternal body incorporated June 29th, A. D. 1894.

Supreme Lodge Knights of Pythias v. *Improved Order of Knights of Pythias*, 113 Mich. 140; 38 L. R. A. 658.

A federal corporation should at least be construed with reference to its validity by the proper tribunal.

Cohens v. *Virginia*, 6 Wheat. 264.
Osborn v. *Bank*, 9 Wheat. 738.
Kenny v. *Gibson*, 8 Wall. 498.
Pa. Ry. cases, 115 U. S. 2.

A state court by erroneous construction as the Georgia Supreme Court did, would make a charter under a federal act nugatory.

III-D.

ARTICLE 4, SECTION 1 OF THE CONSTITUTION OF THE UNITED STATES.

The plaintiffs in error corporation had secured articles of incorporation in the District of Columbia and it is presumed they were valid, and can not be questioned. 19 Cyc. 1213.

In the consideration of them, it should have been determined, first, the rights of plaintiffs in error. The Supreme Court of the State of Georgia could not hold a federal statute invalid, nor deny the rights of persons thereunder. They should have first determined the rights of plaintiffs in error as they appeared of record, and by their answer articles of incorporation under a federal statute was made a part thereof. The said Supreme Court erroneously held that the defendants in error had rights under an Act of Congress of May 5th, A. D. 1870. If it were true that both parties had rights under said Act, it would not have been in the province of said court to hold which party had a superior right under the said federal statute. If full faith and credit had been given to the public acts, records, and judicial proceeding of the Acts of Congress, then the plaintiffs below would not be entitled to relief sought.

It will be remembered that the Grand Lodge Knights of Pythias of Georgia, unincorporated, and individuals (defendants in error) also were parties below, and these also were given relief against Cresswill *et al.* acting as officers, and they, Cresswill *et al.*, not only subsisting by certain rights granted them by The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, reincorporated December 14th, A. D. 1903, but was a part of said corporation under said Act of May 5, 1870. This corporation was "The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia," and Cresswill *et al.*, as well as the grand and subordinate lodges, are a part of said corporation.

Full faith and credit should have been given under said act as provided in such cases, and as required by Article 4, Section 1 of the Constitution of the United States.

III-E.

THE VIOLATION OF THE PLAINTIFFS IN ERROR'S RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

> "Nor shall any state deprive any persons of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws."

The Supreme Court of Georgia decided that "no ground of a motion for a new trial require a reversal."

After the acquiring of a name, badge, emblems, personal and real property that comes to an organization and its members after twenty-six years of existence and twenty years in Georgia, the interest one has as a member in paying assessments or dues in the fraternal insurance of the order of plaintiffs in error, the decision of the lower court virtually confiscates the said property. It is the property accumulated for a certain purpose, and is of no use other than that purpose. The badges and emblems were and can be purchased in any first-class jewelry store, the regalia from any regalia house without restriction.

No copyright nor patent has been secured (Rec., 106) and these are the common property of the person purchasing.

If it were a violation of any state law prohibiting the wearing of such pins or emblems, this would subject the offender to the penalty of the law governing, and such a law has been declared unconstitutional in the case of the *State* v. *Holland*, 96 Pacific Rep. 719. These were adopted and used by the said corporation and members fairly and honestly. The amended answer of the (plaintiffs in error) defendants below shows that in the State of Georgia the membership was 11,805 in 1906 and in the United States 80,747. The evidence shows that there were 300,000 members in the order and paid out from the endowment bureau $554,424.41 for one year. (Rec., 105.) In Georgia there was collected in seven years $180,232.61, and paid out $148,680 to widows and orphans. The average in Georgia paid yearly was $51,000. This does not include burial expenses, which were $9,000. (Rec., 105.)

Rituals can be purchased in Chicago of Sears, Roebuck & Co., for 60 cents; they advertise them; you do not have to be a Knights of Pythias to buy them, anybody can buy them. Rituals can be purchased from Montgomery Ward & Co., in Chicago, but it is not known whether they are the rituals of plaintiffs below. (Rec., 106.) Under such a statement of facts, it is not fair nor equitable to say that this body should cease to exist. If the decision of the lower court stands, it would at once render valueless all the property accumulated, and where there is real estate it would jeopardize the title thereto. The purchase of property is a guaranteed right whether it is individual or corporate.

The association of persons for a lawful right, and

laudable purpose, should be encouraged, and it has not yet been held that an injunction should be granted because of the sensitiveness of individuals. If this were true, the plaintiffs in error as members of their order, or as individuals, and all of their race, would be in a helpless minority. There is no redress, but to the law, as applicable to all persons. Let it be presumed that the members of both orders were white male persons, could there be any doubt as to the verdict of the jury, and the decision of the court in accordance? In the 113 Michigan case, *supra*, both memberships were white male persons in the same state, and there was likely some confusion because of the likeness in color, if white can be termed color, and they were once members of the parent order and still held their residence unchanged. But at the case at bar the different in race, take the question of confusion far from an argument, even by the defendants in error. The cases heard in this court gives it judicial knowledge of the fact that a fraternal benevolent order being social in its nature, it would be impossible to say there was confusion, knowing the social condition in Georgia relative to the races.

There has been no injury to property, and the witnesses that testified for (defendants in error) complainants below, joined their order knowing well of the existence of the order of (plaintiffs in error) defendants below, and the existence of both orders in Georgia for twenty years without confusion would indicate that when objections are made at so late a date, the sensitiveness of some individuals are increasing, a dangerous thing to encourage in this free American government.

The plaintiffs in error sought only to incorporate a voluntary organization that had existed in the State of Georgia for twenty years, but the injunction issued in this cause prohibited the wearing of badges, pins, emblems, etc., and the use of the insignia of the order by plaintiffs in error, when they had been honestly adopted and used. The Legislature of the State of Montana sought by the enactment of a penal statute to prohibit the same, to-wit, the wearing of pins, badges, emblems and using the insignia and ceremonies of certain organizations, and the Knights of Pythias was one of the favored organizations named.

Laws of Montana, 1907.

The Supreme Court of Montana held that such a law was unconstitutional and contrary to the provisions of the fourteenth amendment of the Constitution of the United States.

96 Pacific Rep. 719.

While this action is not under a penal statute, it does seem that an injunction which prohibits the wearing of pins, badges, emblems, etc., as was entered herein, violates the rights of plaintiffs in error under the fourteenth amendment of the Constitution of the United States.

III-F.

PRIOR AND EXCLUSIVE RIGHT TO USE OF NAME. THE ACTS OF CONGRESS CONSIDERED.

Before the defendants in error are entitled to the relief sought, it must appear that they have the prior and exclusive right to the name Knights of

Pythias, and on this question the following facts appear of record:

In the City of Washington, in the District of Columbia, on the 19th day of February, A. D. 1864, Justus H. Rathbone and his associates organized a society styled Knights of Pythias. It was and did consist of subordinate lodges organized in various cities and towns in the United States.

In the District of Columbia, on the 8th day of April, A. D. 1864, the subordinate lodges organized and submitted themselves to the jurisdiction and control of a central body known as the Grand Lodge, Knights of Pythias of the District of Columbia. On the 11th day of August, A. D. 1868, several Grand Lodges having been organized, they then organized a Supreme Lodge Knights of Pythias, and the said Grand Lodges submitted to the control and jurisdiction of said Supreme Lodge. (Rec., 22.)

Justus H. Rathbone, his associates, various subordinate lodges unincorporated, various Grand Lodges unincorporated, and a Supreme Lodge unincorporated, all used the name Knights of Pythias. This use by the various persons and organizations was from the 19th day of February, A. D. 1864, without the incorporation of any of them. On the 5th day of August, A. D. 1870, Joseph T. K. Plant, Edward Dunn, Francis Wood, Joseph S. Martin, Clarence M. Barton, H. Kronheimer and Hugh G. Devine incorporated a Supreme Lodge Knights of Pythias of the World. Under Act of May 5, 1870, neither Justus H. Rathbone nor his associates appear to have incorporated this Supreme Lodge Knights of Pythias of the World. (Rec., 72.)

The Supreme Lodge officers as named in said articles of incorporation together with all past grand chancellors of each and every territory or jurisdiction then organized or to be organized under the authority of said Supreme Lodge constituted the incorporated body The Supreme Lodge Knights of Pythias of the World. (Rec., 72.) This Supreme Lodge, Knights of Pythias of the World incorporated, Grand Lodges unincorporated subordinate lodges unincorporated and members used the name Knights of Pythias. This Supreme Lodge existed until the expiration of the period for which it was incorporated under said act of May 5, 1870, to-wit: the 5th day of August, A. D. 1890, being twenty years. (Rec., 71.)

There were several amendments which of course could not extend the limitations of said act as to the period of its corporate existence. (Rec., 73, 74.)

From the 5th day of August, A. D. 1890, a Supreme Lodge, Grand Lodges, subordinate lodges and members unincorporated used the name Knights of Pythias until the 29th day of June, A. D. 1894.

On the 29th day of June, A. D. 1894 under a special act of Congress a Supreme Lodge Knights of Pythias was created. (Rec., 77.) This was a new body not a corporate succession, because a corporate body of the name of "The Supreme Lodge Knights of Pythias of the World," had expired August 5, A. D. 1890. (Rec., 72.)

This body assumed all claims, accounts, debts, things in action or other matters of business of

whatever nature now existing for or against the PRESENT Supreme Lodge Knights of Pythias.

The present Supreme Lodge Knights of Pythias was an unincorporated body. It appears that George B. Shaw, William W. Blackwell, *et al.*, officers and members of the Supreme Lodge Knights of Pythias, no doubt a Supreme Lodge of that name unincorporated and their successors were incorporated as a Supreme Lodge Knights of Pythias under special act of Congress June 29, 1894. (Rec., 77.)

This Supreme Lodge Knights of Pythias incorporated Grand and subordinate lodges, and members unincorporated have and are using the words Knights of Pythias.

On the 26th day of March, A. D. 1880 in the City of Vicksburg, and State of Mississippi subordinate lodges were organized of Knights of Pythias of North and South America, Europe, Asia and Africa. (Rec., 48.)

These lodges and members used the words Knights of Pythias, and on the 15th day of April, A. D. 1880 a Grand Lodge was organized in the State of Mississippi. On the 17th day of April, A. D. 1880 a Supreme Lodge was organized. (Rec., 132.) These Supreme, Grand and Subordinate Lodges, and members thereof used the name Knights of Pythias from the 26th day of March, A. D. 1880.

On the 16th day of October, 1889, under act of Congress of May 5, A. D. 1870, E. A. Williams, Geo. W. Brown, *et al.* at Washington in the District of

Columbia, incorporated the Supreme Lodge, Knights of Pythias of North and South America, Europe, Asia and Africa (Rec., 109) and under the provisions there given were authorized to establish Grand and subordinate lodges, and these lodge and members thereto used the words Knights of Pythias. On the 14th day of December, A. D. 1903 in the District of Columbia Samuel W. Starks, Samuel A. T. Watkins, *et al.* re-incorporated, and succeeded the corporation of October 10, A. D. 1889, and became, The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia. (Rec., 111.) The Supreme, Grand and subordinate lodges and members thereof subordinate to and a part of, used the words Knights of Pythias.

It will be noted that, The Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa, was incorporated the 10th day of October, A. D. 1889, and by re-incorporation has continued its corporate existence to date; this is the body that Cresswill, *et al.*, plaintiff's in error are subordinate to and a part of (Rec., 113, 139), while, The Supreme Lodge Knights of Pythias (defendant in error), one of the parties to this suit was incorporated the 29th day of June, A. D. 1894. (Rec., 77.)

Between the date of August 5, A. D. 1890, the date of the expiration of the life of a corporation of August 5, 1870, and June 29, A. D. 1894, the date of the incorporation of one of the defendants in error, The Supreme Lodge Knights of Pythias of North and South America, Europe, Asia and Africa, was the

only incorporated body of any Order of Knights of Pythias, this being the parent body of Cresswell, *et al.* There were and are other orders of Knights of Pythias. The Improved Order of Knights of Pythias, 113 Mich. 140 and the Colored Knights of Pythias, 92 Miss. 506.

Therefore to claim the prior and exclusive right of the words Knights of Pythias is not borne out by the record, and this must be clearly shown.

The Most Worshipful Grand Lodge, etc. v. *Grimshaw, et al.* 34 Appeal cases 383, Dist. of Columbia.

Original La Tosca Social Club v. *La Tosca Social Club,* 23 Appeal cases 96, Dist. of Columbia.

It is not the use, but the dishonesty in the use of the name that is condemned. The defendants having acted in good faith as shown herein, their action has been free from fraud and dishonesty, and without fraudulent intent there can be no ground for relief.

Howe Scale Co. v. *Wycoff,* 198 U. S. 118.

Singer Mfg. Co. v. *June Mfg. Co.,* 163 U. S. 169.

Wagner Typewriting Co. v. *Webster Co.,* 144 Fed. Rep. 406.

Plant Seed Co. v. *Mitchell Plant Seed Co.,* 23 Mo. App. 576.

The right to use the generic name of a patented article in every form passes to the public with the dedication resulting from the expiration of the patent, even if the name is a surname of the patentee or original manufacturer.

Singer Mfg. Co. v. *June Mfg. Co., supra.*

If it could be presumed that the corporation of August 5, A. D. 1870 under act of May 5, 1870 succeeded the unincorporated bodies of Knights of Pythias then existing, or whatever rights they possessed had been assigned to said corporation, at the expiration of the charter of said corporation which was August 5, A. D. 1890, the phrase "Knights of Pythias" in every form passed to the public, because of the expiration of said charter.

III G.

PROPERTY IN CORPORATE NAMES.

A corporation is a distinct existence from the individual constituting it and it is essential for it to have a name. It is called the "knot of their combination." Since a corporation must have a name, there must be some property in its name like trade marks.

The name of a corporation is to a certain extent property and will be protected in a proper case on principles somewhat analogous to those applied to trade marks.

Grand Lodge Ancient Order, etc. v. *Graham*, 96 Iowa, 592.

1st Thompson on Corporation, Sec. 284 to 296.

Corporate names are protected to the same extent as trade marks. *Holmes* v. *Holmes*, 37 Conn. 278.

The corporate name is a trade mark from the necessity of the thing and deserves the same protection from the Court of Equity. *Newby* v. *Oregon, etc.*,

18 Fed. Case, 10,144. The property in a corporate name is the value of the corporate name and in every case it arises from the ownership of some thing of value, or from tangible property or from business which is in itself a power to produce something of value. This is deducible from every case and in the same way a trade mark to which the corporate name is always analogized is of no value when it is not used in actual trade and affixed to things of value. So a corporation not in business or any value producing undertaking has no property right in its name, at least no such which can be protected by law. Equity has no power to correct moral delinquencies or redress moral wrongs. Complainant has no relief unless it shows a clear property right and an invasion of that right by defendant. There is no such thing as a trade mark distinct from and unconnected with a vendible commodity. It can have no other existence as property.

Schneider v. *Williams*, 44 N. J. Eq., 391 and at 393 and 394.

So with a name there is no property unconnected with a tangible right in a thing of value.

1st Thompson on Corporation, 2nd Ed., Sec. 64.

Grand Lodge, etc. v. *Graham*, 96 Iowa, 592; 31 L. R. A., 133.

So in England relief is not given on account of property in a name, except connected with a trade so as to make people think they are dealing with complainant.

Lee v. *Haley*, L. R. A., 5 Ch., 155.

Tussand v. *Tussand*, 44 Ch. Div. 678.
Levy v. *Walker*, 10 Ch. Div. 436.
Millington v. *Fox*, 3 Mylne & Craig 336.

Not only must there be a trade of business, but it must not be a different line of business. Good will will not be protected except in the same connection.

Dodge Stationary Co. v. *Dodge*, 145 Cal. 38.

Merchants Banking Company of London not entitled to injunction against Merchants Joint Stock Bank carrying on business among a different class of traders, the evidence not showing any intention or probability of appropriating plaintiff's business.

9 Ch. Div. 560.

In the case at bar there are different lines of business. The different races make it more distinct than anything else possible, more so than that of different territories. A family has no such property in this patronymic name as to enjoin a stranger from using it otherwise than with trade or business. *DuBoulay* v. *DuBoulay*, L. R. 2; P. C. A. 430.

Owner of Ashford Lodge cannot enjoin owner of Ashford Villa, who adopted this name subsequently and who is an adjoining property owner, from the use of the name alleging inconvenience and damage. It was held not an injury to the property and not a name which would be protected because not connected with any business.

Day v. *Brownrigg*, 48 L. J. Ch. 173.

III H.

A COLORABLE IMITATION.

Regardless of the fatal defects pointed out the case was submitted to the jury under the direction of the Supreme Court (128 Ga., 775), every question of law and fact being left open for a determination in said trial. It is not pretended either in the pleadings or proof that the name of the plaintiff in error is the same as that of the defendants in error, but it is insisted that the name is a colorable imitation.

The jury in finding that the name was a colorable imitation did not so find from any evidence, because all the evidence upon that subject clearly demonstrates that nobody has been deceived and misled by confusing the names, and the testimony of the defendants in error's own witnesses show that it is impossible for any negro or person of color to be admitted into the organization of the defendants in error, and therefore the finding of the jury upon this subject was without evidence and only an unwarranted conclusion and not a fact.

A colorable imitation is such a similarity that any person, with such reasonable care and caution as the public generally are capable of using and may be expected to exercise would mistake the one for the other. It is not sufficient that some persons might possibly be misled.

> *International Trust Co.* v. *International Loan and Trust Co.*, 153 Mass. 271 (10 L. R. A. 758).

It is decided in the case last quoted that "The International Loan & Trust Company is a name so nearly like that of the International Trust Company as to mislead the public, and therefore cannot be used under the statutes by a foreign corporation when the other name is already in use by a domestic corporation, but the addition of the words "Kansas City or Kansas City, Missouri," to the name of the other corporation makes the use of it lawful. This is a case directly in point and is much stronger than the case at bar, in that it refers to trade names, property and property rights. In the case at bar the addition of the words of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia, far more than in the case last quoted, distinguishes the two names and makes the plaintiffs in error name lawful. Such a combination and collection of the names of the grand division of the world are especially striking and would serve to mark any distinction. Specially is the word Africa distinctive and sounds a note of warning unmistakably wherever used.

Gillman v. *Honeywell*, 122 Mass. 139.
Partridge v. *Menck*, 2 Sandf. Ch. 635.
Gail v. *Wackerbarth*, 28 Fed. 286.

If the names are so alike that a person using that care and caution and observation which the public use would mistake the one for the other, then it is too close, but the character of the business and the location of the corporation is always considered.

Thompson on Corporation, Section 299, 1st Ed., and cases cited.

In the case at bar the character of the business, if it is a business, is entirely between different customers, white and black, and cannot cross the line and the location of the corporations, one among the whites and one among the blacks, is as wide a separation as if the sea divided them.

The reason of the protection of the name of the corporation is that it is in the nature of property and is a sort of franchise, and it is done to prevent fraud, actual or constructive, and the obtaining of business, one by the other.

The fact that the words Knights of Pythias are common to both corporations would certainly not overweigh the great differences in the other part of the name. All over the world there are corporations with one or two words in their names alike. There is direct authority for this in the case of the *Continential Insurance Co.* v. *Continental Fire Assurance Co.*, 101 Fed. 255, where the court, by Judge PARDEE, says:

> "We cannot hold that the use of the word 'Continental' as a part of the defendant's corporate name will have any injurious effect upon the business of the complainant. We do not find that there has been, or is likely to be, any imposition upon the public, or any confusion in business transactions and correspondence, because the same word is a part of the name of each corporation, and both do business in the same territory."

This decision was in the face of the recited fact that,

> "the complainant presents some sterotyped affidavits of agents and employes to the effect that they 'believe the name adopted by the de-

fendant will have a direct tendency to mislead the customers, of plaintiff, and to injure its business, and cause it pecuniary loss, and greatly impair its prestige, popularity and the good will which it has established for itself.'"

A corporation known as the Hygeia Water Ice Company cannot restrain a subsequently organized corporation of the name New York Hygeia Ice Company, where it is not shown that the name ever deceived any one or there was any confusion as to identity.

Hygeia Water Ice Co. v. *New York Hygeia Ice Co.*, 140 N. Y. 94.

In this case the court says:

"Courts of equity must assume that the public will use reasonable diligence and discrimination with reference to the names of the corporations with which they deal."

North Fifth Street Mutual Land Association not too similar to North Fifth Street Real Estate Co., 8 Pa. Co. Ct. R. 15.

The words "Order of" sufficient to distinguish *In Re* Waverly Ladies of the Red Cross, 12 Pa. Co. Ct. R. 589. The names London & Provincial Law Association Society not too similar to London & Provincial Joint Stock Life Assurance Co., 17 L. J., Ch. 37. So London Assurance Corporation and London & Westminister Assurance corporation not too similar. 32 L. J., Ch. 664.

The following names were held not too similar:

Elgin Butter Co. v. *Elgin Creamery Co.*, 155 Ill. 127.

Industrial Mutual Deposit Co. v. *Central Mutual Deposit Co.*, 112 Ky., 937.

Goodyear Rubber Co. v. *Goodyear India Rubber Glove Manufacturing Co.*, 128 U. S. 598.

The Home Insurance Company, a New York corporation, cannot prevent the Home Life Insurance Company, a Michigan corporation, from organizing as a corporation in Michigan, 111 Mich. 405.

Order Scottish Clans v. *Am. Order Scottish Clans*, 151 Mass. 558.

(This was after certificate granted, but it was nevertheless decided by the court.)

Boston Rubber Shoe Co. v. *Boston Rubber Co.*, 149 Mass. 436.

Sun Life Insurance Society v. *Sun Life Insurance Society of Canada*, (1894) 1 Ch. 537.

With ordinary care the public could not be misled by the two names in the cases at bar. This is true as a matter of law. Compare the doctrine of *idem sonans*. 4 Words and Phrases, 3380; 29 Cyc., 276. Note 60.

The Supreme Court of Georgia cited certain trade mark cases that will be observed, and the Elks cases. In the *Benevolent and Protective Order of Elks* v. *Improved Benevolent and Protective Order of Elks*, 118 S. W. 389. The case itself will convince that it is not in point with the one at bar. In the language of the court,

> "it employed certain business activities for the purpose of maintaining itself and to procure funds to carry out the purposes of its organization, and it maintained certain business institutions its club house and its home for aged and invalid members."

The Elks organization is a social and business organization, and not a benevolent organization solely. It solicits funds and maintain club houses. Appealed to the public and on faith and reputation of their name received large sums of money from the public. The defendants in said case was a new organization, had not acquired large membership nor acquired large property interests. In the New York case, 60 Misc. Rep. (N. Y.) 223, confusion had arisen, the plaintiffs' existence and affairs were threatened, and there was imminent danger that the objects and purposes for which it was incorporated would be interfered with.

In the Pennsylvania case, 39 Sup. Ct. Rep. 365, the same facts relative thereto are the same, and confusion had arisen which was the non-delivery of an assignment of whiskey among other things.

The Supreme Court of Georgia in the case at bar takes the position that plaintiffs in error took the defendants in error name without authority and after defendants in error order had been expressly refused (no doubt referring to a body of colored citizens making application at Richmond, Va., March 8, 1869) and for that reason the 113 Michigan *supra* did not apply. This will be remembered to been thirty-seven years previous, and this application could not have been the plaintiffs in error body because the plaintiffs in error body was not organized until 1880 eleven years after this incident, and was incorporated in 1889 twenty years after the said incident. The Supreme Court of Georgia further said, "in the very teeth of the law by which they claim to have legal existence." The said Su-

preme Court proceeded all along on the idea that the plaintiff in error was incorporated in A. D. 1870, and not in A. D. 1894. It is again urged that the plaintiff in error corporation is the corporation of special act of Congress A. D. 1894 and has been so held by the Supreme Court of Michigan in said 113 volume *supra*, and if the Supreme Court of Georgia was correct on this point, it is urged that the name is not "a name or style the same as," the defendant in error corporation.

The questions of law as to the similarity of name may be noted further:

American Order of Scottish Clans v. *Merrill*, 151 Mass. 558.

Rice v. *National Bank*, 126 Mass. 300.

International Trust Co. v. *International Trust Co.*, 153 Mass. 271.

Gillman v. *Hennewall*, 122 Mass. 139 to 148.

McLain v. *Fleming*, 96 U. S. 245.

Boston Rubber Shoe Co. v. *Boston Rubber Co.*, 149 Mass. 436.

Bank of Commerce of Buffalo v. *Buffalo Commercial Bank*, 35 N. Y. St. Rep. 708.

Citizens Trust and Surety Co., 9th Pa. Co. Ct. 366 also note 7 Am. Eng. Enc. of Laws, 2nd Ed. 690, note 1, 28 *id.* 414, note 1.

In *McLain* v. *Fleming*, *supra*, the court said, all that counts of justice can do is to say that no trader can adopt a trade mark so resembling that of another trader as that ordinary purchasers buying with ordinary caution are likely to be misled.

In *Boston Rubber Shoe Co.* v. *Boston Rubber Co.*

supra, in the same city the court refused to enjoin the junior company from use of the name of Senior Company.

The Bank of Attica was allowed to change its name to Buffalo Commercial Bank notwithstanding the opposition of the Bank of Commerce of Buffalo.

35 N. Y. St. Rep. 708.

The name of International Loan & Trust Co. of Kansas City was held not to resemble International Trust Co. closely enough to justify an injunction to restrain it from doing business in Massachussets, 153 Mass. 139.

Citizens Trust and Surety Co. does not conflict with City Trust Safe Deposit and Surety Co., 9th Pa. Co. Court 366.

The Merchants Banking Co. of London, Ltd. and The Merchants Joint Stock Bank, Ltd. no infringement and injunction refused, 9 Chan. Div. 560 (at London, Eng. 1878).

In *Rice* v. *National Bank,* 126 Mass. 160 certificate of secretary was conclusive as to being incorporated its rights as a corporation, and also corporate name.

It is not sufficient that some person might possibly be misled, but the similarity must be such that any person with such reasonable care and observation as the public generally are capable of using and may be expected to exercise would mistake for the other.

Gillman v. *Honnewall,* 122 Mass. 139.

Partridge v. *Mench,* 2 Sandf. Chan. 622.

Snonden v. *Noah,* Hopk. Chan. 347.

McLean v. *Fleming,* 96 U. S. 245, *et al.*

In the *American Order of Scottish Clans* v. *Merrill, supra,* a beneficial association, a bill was sought to enjoin others by name of Scottish Clans, the court refused to enjoin, as name was not entitled to be protected as trade mark.

The Massachussets statutes referred was, "The name shall be one not previously in use by an existing corporation or so similar as to be liable to be mistaken therefor.

III J.

FRAUD IN CONNECTION WITH SIMILARITY.

The rule is where the resemblance is sufficiently close to raise a reasonable probability of mistake by the public, or where there is an intention to deceive. 1st Thompson on Corporations, Sec. 66, 2nd Ed., citing many cases.

The plaintiffs in error have the legal right to the use of the name under which they seek incorporation in the State of Georgia, because the name was conferred upon them by their charter, and they have not changed that name and have not held themselves out to be any other corporation than that set forth in their charter. There is absolutely nothing in the evidence to show that by the use of the name they have intended to deceive anybody or the public, or that anybody has been deceived or misled by its use. The name of the plaintiff in error having been given by its sovereign creator, it has as much right to

that name as if it were an inherited family name, and the same right to use the name.

"Having the right to that use courts will not interfere where the only confusion, if any, results from a similarity of the name and not from the manner of the use. It is not the use, but dishonesty in the use of the name, that is condemned."

Howe Scale Co. v. *Wychoff*, 198 U. S. 118.

It is a well settled doctrine,

"that every one has the absolute right to use his own name honestly in his own business, even though he may thereby incidentally interfere with and injure the business of another having the same name. In such case the inconvenience or loss to which those having a common right are subjected is *damnum absque injuria.*"

Singer Manufacturing Co. v. *June Manufacturing Co.*, 163 U. S. 169.

Wagner Typewriter Co. v. *F. S. Webster Co.*, 144 Fed. 405.

It is held that when a second corporation with a name that infringes is chartered that is conclusive of its right not only to be a corporation, but a corporation with that name.

Boston Rubber Shoe Co. v. *Boston Rubber Co.*, 149 Mass. 436.

Rice v. *National Bank*, 126 Mass. 300.

To warrant relief at all fraudulent intent should be established by very satisfactory proof.

Plant Seed Co. v. *Mitchell Plant and Seed Co.*, 37 Mo. App. 313.

"In respect to corporate names the same rule applies as to the names of corporations and

individuals, but the courts interfere in this case, not on the ground that the state may not affix such corporate names as it elects to the entities which it creates, but only to prevent fraud."

Higgins Co. v. *Higgins Soap Co.*, 144 N. Y. 462.

III Z.

RULE IN BENEVOLENT ASSOCIATIONS.

As to benevolent societies, the test is whether by use of the name by the new corporation the order will be damaged by depriving it of members who would otherwise join it.

Bacon on Benefit Societies, Sec. 48 A, citing cases.

Issues between benevolent associations, and between those associations and its members are not within the province of a court of equity where it is not shown that any property right is endangered, even though an irreparable injury may be done.

Wellenvoss v. *Grand Lodge Knights of Pythias*, 40 L. R. A. 488 (Ky.)

The decisive principle in trading corporations, and which is extended to benevolent societies, is that one must have a name so similar as to draw to itself business or membership, or other advantages intended for the other. The whole doctrine is fully developed in the case of the *Supreme Lodge Knights of Pythias* v. *Improved Order Knights of Pythias*, 113 Mich. 140; 38 L. R. A. 658, in which case the plaintiff in the case at bar was a party and Improved Order Knights of Pythias an unincorpor-

ated body was defendant organized June 30, 1895. It is respectfully urged to the court that the facts in the case at bar show that it is impossible that the plaintiff will be damaged by depriving it of members who would join it, or that there is any palming off of the order of the defendants, as that of the plaintiffs, nor is any damage shown, but only an injury to the feelings which cannot justify an injunction. Both of these are charitable institutions and there is no precedent in law or equity for enjoining the other.

The Supreme Court of Michigan ranks as high as any court in the United States, and in discussing the elements of damage between two benevolent orders the court says:

> "The defendant should not use the name so much like the name of the order from which they have withdrawn as to work a damage to that order. The only way that the order can be damaged, as the least reflection will prove, is by depriving it of members who would otherwise join it. Let us apply to this case the principles by which courts determine similar controversies of trading concerns. The decisive principle is this. No man has a right to sell or advertise his business, or goods as those of another. (Citing cases.) One must not therefore adopt a name so similar to that of another as to draw to itself business intended for the other. (Citing cases.) Where a corporation has appropriated and used a name for such length of time as to become identified by the name and had established a character and reputation under it, it is a fraud upon the corporation and the public if this name be assumed by others under such circumstances as would lead the public to believe that they constitute

> the original corporation, and where injury will result to the corporation on account thereof, courts of equity will enjoin the further perpetration of the wrong. It is enough that the names should be used under such circumstances as to lead the public to believe that the latter organization was the former and thereby cause injury to the former corporation."

The court after thoroughly arguing the case and citing many authorities and emphasizing the fact that circumstances attending its use as well as a similarity of names determined whether business is liable to be diverted and consequently whether the court should interfere, says:

> "This case must be decided not by citation of authorities, but by answering the question, would an ordinary person using ordinary care wishing to join the Knights of Pythias, join the Improved Knights of Pythias? For the reason above stated I must answer this question no. A decree will be accordingly entered dismissing complainant's bill."

Considering the difference in race and other circumstances surrounding the parties in the case at bar, let us ask the same question. Would an ordinary person using ordinary care wishing to join the Knights of Pythias of Georgia, join the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia?

The court decided that,

> "The Knights of Pythias is a secret unincorporated society organized in 1864. The complainant is the Supreme Lodge Knights of Pythias incorporated by special act of Congress, 1894."

Since the above case was decided there are other cases emphasizing the same rules and showing injunctions are not applied so strictly as to corporate names and infringements, in questions arising between societies for patriotic, unselfish and charitable ends, but the same property rights are required.

Colonial Dames of America v. *Colonial Dames of New York and National Society of Colonial Dames*, 60 N. Y. Sup. 302 (63 App. Div. 615), 173 N. Y. 586.

In this case plaintiff's society was formed in 1890, for patriotic ends. Defendant's society, an incorporated society, was formed soon afterwards. No effort was made to restrain until several years afterwards, when each had large membership and there appears to have been no confusion except as to the identity of mail. Held, plaintiffs not entitled to enjoin the defendants from use of their name.

Also, the case of *International Committee of Young Women's Christian Association* v. *Young Woman's Christian Association of Chicago*, 194 Ill. 194, which is followed by *People* v. *Rose*, 225 Ill. 496, without discussion, and where the doctrine is discussed and the injunction is granted (though with dissenting opinions) upon the sole ground that the similarity of the names might mislead the public in the way of donations. This is purely a property right. A property right is also involved in the case of *Lane* v. *The Evening Star Society*, 120 Ga. 355.

A benevolent corporation cannot object to a sub-

sequent corporation assuming a somewhat similar name.

America, etc., Clans v. *Merrill,* 151 Mass. 558.

Injunction will not lie in favor of a social club on this ground, except where property right is involved.

Original LaTosca Social Club v. *LaTosca Social Club,* 23 App. D. C. 96.

In the case of the *Society of War of 1812* v. *Society of War of 1812, in the State of New York,* 46 App. Div. 568 (N. Y.), the defendant was enjoined because of the statute forbidding the incorporation of any corporation of a similar name, and because in this case, the name of the defendant's corporation tended to create confusion and to interfere with the business of the other. It was alleged by complainant that the defendants caused the public generally to believe that the defendants was the plaintiff's society and thus wrongfully did divert funds, membership applications and obtain gifts of bequest and things of value and valuable privileges given by Congress, and the court put it on the ground of business, not a trading or commercial business, but one of money value.

The case of the *Knights of Macabees of the World* v. *Searle,* 75 Neb. 285, was decided upon a statute forbidding the incorporation of another corporation of the same or similar name, and follows the rule that to obtain injunction, the offending name must mislead the public, cause confusion and "enable it to obtain membership."

"Courts of equity do not exercise jurisdiction to inquire into and adjudicate the right of different associations for charitable or religious objects to hold themselves out to be the regular and only accredited representatives of some particular order or religious system. There must be some pecuniary injury resulting from the use of a name that may have been adopted by another to warrant inquiry and justify relief. The injury must not be fanciful or sentimental, but real. It must be substantial, and such as a court of equity upon principles of justice will interpose to prevent."

The Most Worshipful Grand Lodge, etc., v. *Grimshaw et al.*, 34 Appeal Cases 383, Dist. of Columbia.

III K.

PLAINTIFFS IN ERROR'S NAME NOT FRAUDULENT INFRINGEMENT.

The name of The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia, is not fraudulent.

It appears that Cresswill *et al.*, as officers, petitioned to incorporate by name stated. (Rec., 29.)

The defendants filed a petition in the lower court asking that the incorporation be denied. This, of course, would present the question of the right to incorporate in the State of Georgia. The said petition of defendants in error, prayed further that the said officers and successors be prohibited from using the name of Knights of Pythias, emblems and everything else that would complete the annihilation of the said officers' organization, the Grand Lodge

Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia, and said Supreme Lodge of said order of plaintiffs in error, which was doing business through the said Grand Lodge of Georgia and had been since the year A. D. 1886, twenty years before the bill was filed (Rec., 48) , and yet the court held that in accordance with a jury that there was a fraudulent infringement. The court below cited trademark cases and Elks cases, which are not in point, as the Elks are a social and business order, in support of their opinion; and held that the *Supreme Lodge Knights of Pythias* (plaintiffs in error's corporation) v. *Improved Order Knights of Pythias,* 113 Michigan 135 (38 L. R. A. 658), which is a fraternal order case, was not in line with the trend of authorities. In this case the Supreme Court of Michigan distinguished the difference between trademark cases and case at bar. The point is not whether one name is a colorable imitation, but whether an ordinary person, using ordinary care, would mistake one for the other. A colorable imitation, if it were true, would not necessarily cause injury nor is a property right involved, and without this an injunction would not lie. Using the name of twenty years in Georgia, twenty-six years in other places, before the filing of this suit, public parades, signs indicating meeting places; incorporated under the laws of Congress, would not justify the statement or finding that the use of their name was fraudulent.

III L.

TO WARRANT RELIEF BY INJUNCTION INFRINGEMENT OF ACTUAL PROPERTY RIGHTS MUST BE SHOWN.

There must be an injury measurable by value in money's worth.

Paragraphs 5, 7, 24, 25, 26, 29, 32, 34 and 37 of the amended motion for a new trial involves this question.

The defendants in error do not insist that they have been damaged either by the loss of member, of property or of money. Mr. Hill testifies (Rec., 62) that they do not allow colored people in the Knights of Pythias and that there has never been any attempt by them to get in, as to his knowledge, and there is no danger at all of a colored man getting in. Mr. Burnes testifies (Rec., 64) that he did not know that the business interest of the plaintiffs (defendants in error) is affected at all on account of the existence of the defendants (plaintiffs in error) and the only way that his organization is affected injuriously was the confusion that is likely to arise in the correspondence of the two organizations. Mr. Eubanks testifies that the colored organization is a source of great humiliation to him (Rec., 65); that it detracts from the genuine order of Knights of Pythias for the other order composed of black men to exist and do business. Mr. Douglas testified (Rec., 70) that he resented very much having friends and people get after him and joke him about his colored brethren, and nowhere in the evidence is it claimed, as above stated, that the plaintiffs' order (defend-

ants in error) has been injured in a substantial way or damaged in any way and that the only injury is an injury to their feelings or sensibilities.

A property right must be involved, not mere damage to reputation or feeling. Injunction is only allowed when it would otherwise result in confusion or injury to plaintiffs' business.

High on Injunction, Sec. 1081, 4th Ed.

Injunction is not granted for right or wrong in the abstract, but only against injury or damage. The damage must be for a property right.

The Most Worshipful Grand Lodge v. *Grinshaw et al., supra.*

High on Injunction, Sec. 1.

The principle that a property right must be involved before injunction will lie is announced in the case of *The Singer Company* v. *The Domestic Company,* 49th Ga., in which Judge McKay, on page 73, says:

> "that the general rule is that to get an injunction you must show the infringement of a property right."

And further, on page 74, the learned judge says:

> "The principle is, that to authorize the writ there must be an irreparable expected injury to a property right."

In the case of *Hussey* v. *Gallagher et al.,* 61 Ga. 90, Justice Jackson, delivering the opinion, uses the following language:

> "I will say, however, that the basis of all equity jurisdiction, except in regards to infants, is property. Money or property is the basis of

its interference. Therefore, with merely honorary offices or temperance societies, it does not interpose by injunction."

To warrant relief by injunction infringement of actual property rights must be shown. No slander of another's reputation or name will justify it.

The Most Worshipful Grand Lodge, etc., v. *Grinshaw et al., supra.*

High on Injunction, page 1093, 4th Ed.

It is always necessary for complainant to show that its trade or business for gain or profit would be injured by the alleged wrongful conduct of the defendant.

London and P. Law Asso. Society v. *London and P. Joint Stock Law Ins. Co.*, 11 Jur., 938.

There can be no remedy by injunction for mere injury to the feeling.

High on Injunction, Sec. 20b.

The authorities heretofore cited by the defendants in error upon the question of infringement and injunction refer to trade and trade names, property and property rights and unfair competition, and have no application in this case, because these organizations are not business organizations, and are not organized for gain or profit and are purely social and benevolent. The jury, in answer to question propounded to them, did not find what property right was injured, or did they find that any property right was injured, for the good and sufficient reason that no property right was involved.

Corporate names are protected in equity like trademarks.

10th Cyc., pages 150 to 154, and cases cited.

Even if there should be a similarity of names there can be no relief in equity unless there is substantial damage.

> "An injunction lies to restrain the simulation and use by one corporation of the name of a prior corporation which tends to create confusion and enables the later corporation to obtain by reason of the similarity of names, the business of the prior one. The ground of relief is the injury to the party aggrieved and the imposition upon the public by causing them to believe the goods of one are the production of the other."
>
> *Higgins Co.* v. *Higgins Soap Co.*, 14 N. Y. 462.

There can be no confusion with the separate races in fraternal bodies.

Injunction can only go prohibiting like business under like name and not to different business under like name or like business under different name.

> *International Trust Co.* v. *International Loan & Trust Co.*, 153 Mass. 271.

Injunction will issue only for the protection of a property right, or a right in the nature of property right and not a moral obligation.

> High on Injunction, Sec. 20.
>
> *Von Der Platt* v. *Asso.*, 70 N. J. Eq. 116.
>
> *Healy* v. *Smyth*, 14 Wyo. 263.
>
> *Marshall* v. *Marksville*, 116 La. 746.

Right of injunction can only be acquired by persons who are peculiarly injured.

"To obtain an injunction there must be a reasonable probability that plaintiff's business will be damaged. You cannot use a name which represents to the world that your business is my business so as to take my profits."

Levy v. *Walker,* 10 Ch. Div. 678.

The same is the general rule in Georgia, that equity has jurisdiction for the protection of property rights and franchises.

Georgia Railway & Electric Co. v. *Oakland,* 129 Ga. 577.

Where only a similar name is used it is usually held that some actual damages, past, present or imminent, must be shown. A corporation will be protected in its name as a trademark.

State v. *McGrath,* 92 Mo. 355.

The use of a similar name by a corporation will not be enjoined unless it be clearly proven that the complainant will suffer injury.

Drummond Tobacco Co. v. *Randall,* 114 Ill. 142.

London & P. Law Asso. Society v. *London & P. Joint Stock Loan Ins. Co.,* 11 Jur. 938.

III M.

EXTENT OF AN INJUNCTION.

It is not the object nor the will of equity to destroy or annul a corporation by restraining it on account of identity or similarity of name. In such case equity will adjust itself to the exigencies of contesting claimants, its sole object being to prevent one from wronging the other. Further than this it will not go.

Where names of two contesting corporations were similar, except that later corporation had in addition the place where it did business, it was held that the later would be enjoined from doing business in a name similar to complainant, but left it free to do business under its full name. In other words, it must not abbreviate so as to mislead the public.

International Trust Co. v. *International Loan & Trust Co.*, 153 Mass. 271.

Dodge Stationary Co. v. *Dodge*, 145 Cal. 380.

Sanders v. *Sun Life Insurance Co.* (1894), 1 Ch. 537.

So in the case at bar injunction could not lawfully go if there were none of the above defenses in the case further than to restrain the plaintiffs in error from using the words Knights of Pythias alone and without their full name.

III N.

A FOREIGN CORPORATION HAS NO RIGHT TO OBJECT TO A DOMESTIC CORPORATION BEING INCORPORATED UNDER THE SAME NAME.

The Supreme Lodge Knights of Pythias is a foreign corporation, and the Grand Lodge Knights of Pythias of Georgia, and the individuals who brought the petition for injunction, have no right or interest in the subject matter of dispute, except only as derived from the supreme lodge, the foreign corporation. The individuals who want incorporation are citizens of Georgia and have applied to be a corporation of Georgia, with all the rights and privileges of the corporation of the United States, under which they derive all their rights and powers. The plaintiff in the court below, a foreign corporation, objects. It has been held

> "that a foreign corporation, doing business in a state only by license, has no standing in a court of equity to question the right of a corporation of the state to do business therein under the name by which it was chartered, on the ground that such name is similar to its own and that it has an exclusive right to its use."
>
> *Continental Insurance Co.* v. *Continental Fire Association*, 101 Fed. 255.

This is a case from the United States Circuit Court of Appeals, and Judge PARDEE, in the opinion, says:

> "We have found no case in which a foreign corporation has been heard to complain of the corporate name given by the sovereign to a domestic corporation."

and, continuing, the learned judge quotes from *Coal Company* v. *Hamblen*, 23 Fed. 225, as follows:

> "The complainant is a foreign corporation and it is only by comity that it is doing business in Illinois at all. That being so, I do not think that the complainant has a legal right to say a corporation shall not be created in Illinois bearing its name."

If these cases should be supposed subject to the detraction as authority that they are in the United States courts, and that those courts would not interfere with the power of a sovereign state, the answer is that they decide on the principle and reason of the thing, and the fact that in the Continental Insurance Company case the other corporation had already been incorporated does not effect the principle that the one would not be allowed to attack the other's right to exist.

The Hazelton Boiler Co. v. *Hazelton Tripod Boiler Company*, 142 Ill. 494, is a state case of the sovereignty of the corporation attacked. The complainant was a New York corporation, organized June 23, 1888, and the defendant was an Illinois corporation, organized February 29, 1888, and, therefore, the senior corporation. The court states, in deciding this case:

> "In the pursuit of this part of the remedy sought (that is, to enjoin use of corporate name) two obstacles confront complainant, both of which are apparently insuperable (the first if the seniority of defendant, which is not in point here), and the second arises from the position of complainants as a foreign corporation seeking to contest with a domestic corporation the right of the latter to the corporate name given by the sovereignty which created it."

"For this purpose a foreign corporation can have no standing in our courts. Such corporations do not come into this state as a matter of legal right, but only by comity."

It is true in the case at bar that the corporation had not been created, but it would have been created but for the interference of complainants, and its right to exist does not depend upon the fact whether it had or had not been created. This is also the policy of Georgia. Foreign corporations are recognized in the State of Georgia only by comity (Civil code, Secs. 9 and 1846) and can exercise in this state, by such comity, their charter powers, subject to the laws and public policy of this state. (Civil code, Sec. 1847.) Certainly they do not get from this comity any right to interfere with the exercise of the creative power of this state.

A foreign corporation is not within the jurisdiction of a state, and before admitted to do business must comply with any provision which the state may see fit to impose.

Pembina Consol. Silver Min., etc., Co. v. *Pennsylvania*, 125 U. S. 181.

Philadelphia F. Association v. *N. Y.*, 119 U. S. 110.

Doyle v. *Continental Insurance Co.*, 94 U. S. 535.

Ducat v. *Chicago*, 10 Wall 410.

Then what right have they to object to the incorporation of a domestic body?

III-O.

NO ONE CAN OBJECT TO THE CREATION OF A CORPORATION.

In the State of Georgia not only can foreign corporations not object, but no one else can object to the creation of a corporation. The existence and creation of corporation is part of the public policy and government of the state and the exercise of sovereign creative power and prerogative. Their creation is not a judicial power, but is a legislative power, and in one case in this state it has been called ministerial. Courts could only be invested with such power by the constitution, not by the Legislature.

It is held in *The Franklin Bridge Co.* v. *Young Wood*, 14 Ga. 80 and 84 (5):

> "Our opinion is that no legislative power is delegated to the courts by the acts under consideration. There is simply a ministerial act to be performed—no discretion is given to the court. The duty of passing the rule or order directing the petition of the corporators to be entered of record on the minutes of the court, setting forth to the public the object of the association, and the privilege they desire to exercise, together with the name and style by which they are to be called and known, is made obligatory upon the courts; and should they refuse to discharge it, a mandamus would lie to coerce them. It is true the Legislature has seen fit to use the courts for the purposes of giving legal form to these companies. But it might have been done in any other way."

The courts are only used to give corporations legal form, which form protects and secures their legal existence. The fact that courts may grant charters implies that courts may refuse them, but only on grounds that effect their real and legal existence and the validity of their creation.

1st Thompson on Corporations, Sec. 217.

To the same effect is the statute under which they are created in civil code of Georgia, 1911, Sec. 2823, Sub-Section (2):

> "If, upon hearing such petition, the court shall be satisfied that the application is legitimately within the purview and intention of this code, it shall pass an order declaring the said application granted, and the petitioners and their successors incorporated."

It is noteworthy that this order shall be granted upon hearing the petition alone. There is no place for any answer or objection, and the only thing to be determined is whether it is "within the purview and intention of the code"; that is, whether the form is perfect and the incorporation not against public policy.

Where for public interest and reasons such petition is not perfect and the requisites of law are not fulfilled, the corporation will not be granted.

In re Deveaux, 54 Ga. 673.

There can be no objection to the creation of a corporation on account of conflict of private interest.

> "The power conferred by the Constitution upon the courts to grant charters to corporations is legislative and not judicial in its character, and there is no provision in law authoriz-

ing anyone to appear and object to the grant of corporate powers by the courts."

The Gas Light Co. of Augusta v. *West,* 78 Ga. 318.

In the opinion the court says:

"The power conferred by the Constitution upon the courts is most clearly legislative in its character; it is a power to create, and not judicial. A judicial power extends to deciding, determining controversies which arise between persons and individuals according to law. The act of granting corporate powers to private companies is not at all judicial, but on the contrary legislative; it is a part of the sovereign power of the state most usually exercised by the Legislature, but in this state committed by the Constitution to the courts, under the law as prescribed by the Legislature."

The case at bar is certainly a judicial proceeding, even if it is a judicial experiment, and an attempt to ingraft judicial decision upon a ministerial or legislative action of the courts and an attempt to make the court exercise both at the same time, it is contrary to the Constitution of Georgia.

Civil Code of Georgia, 1911, Sec. 6379.

"The legislative, judicial and executive powers shall forever remain separate and distinct, and no person discharging the duties of one shall at the same time exercise the functions of either of the others, except as herein provided."

If no one can appear and object at all, he cannot appear and object by injunction, and consequently this whole petition, whose central and basal purpose is to stop the incorporation of the defendants, does not state a cause of action, *is illegal and unconstitutional,* and all the secondary purposes thereof fall

with it. The whole trial of this case and the decree complained of *is without jurisdiction, unconstitutional and invalid.* This objection can be made at any time, as it has been made in every step in this case and is now made to this court.

Kelly v. *Strouse*, 116 Ga. 872; Sub-Section 5; also pages 883 to 888.

To the same effect, that there can be no objection by a third party to incorporation, and that incorporation cannot be prevented thereby, *Young Woman's Christian Association* v. *Young Woman's Christian Association of St. Louis*, 115 Mo. App. 228. Therefore the right of existence of a corporation in the case at bar cannot be disputed by complainant, and, if not, this case goes out of court. As stated by the justice in the Young Woman's Christian Association case, perhaps there may be a remedy after incorporation if the name of the older corporation has been illegally infringed upon.

The conflicting rights in the case at bar are claimed under two national corporations, whose existence and powers have been heretofore determined by their federal charter, and this court should not interfere with either party, or the rights under either charter, and this makes a federal question.

This is a controversy between members of two national corporations, chartered under Acts of Congress, the plaintiffs in error organizing under Act of May 5th, A. D. 1870, and defendants in error under Act of June 29th, 1894. Both have franchises conferred by the United States. Such franchises are of two classes. First, those created by Congress to carry

out the federal powers of the government, and, second, special acts and those for the District of Columbia, which last are the franchises at bar. These corporations act only by comity in the different states.

Haden v. *Knights of Pythias*, 128 N. C. 546.
Hadley v. *Freemans Savings Bank*, 2 Tenn. Chan. 122.
Daley v. *National Life Ins. Co.*, 64 Ind. 1.
Williams v. *Creswell*, 51 Miss. 817.

But they come into these states with full power of their franchise as granted. This comity is the comity of states and not of courts, and will extend to allowance of all powers of charter unless repugnant to public policy. (19 Cyc. 1223.) The franchise is the power conferred by the state upon the corporation not possessed of common right. The name is a part of these powers and is conferred by an Act of Congress. Georgia is as liberal as any state and only forbids the exercise by foreign corporations of such powers and privileges as are against public policy, and not those against private interest. (Civil Code, 1847.)

These two national corporations having been admitted into the state by comity, with their full powers as conferred by Congress, only the state on the ground of public policy could prevent it being in the state or limit any of its powers. A private grievance cannot invoke the sovereign relationship of comity. The state as such can only do that and will only do it on the ground of public policy and not to help private interest. The courts cannot administer or restrict comity, cannot oust any corporation

from the state or take from it its name, which is a necessary part of a corporation, and without it it cannot exist. These two corporations receive their names from the same parent, dwelt and worked together for many years in all fields, and in this field until the defendant, for laudable purposes, as explained in its pleadings and evidence, tried to domesticate in Georgia under its national given name which it uses everywhere.

There is no public policy why the state should not incorporate, and no private grievance, if there was one ever so great, should prevent incorporation. That is a public right—a matter between the state and the incorporation. Private rights and wrongs can be settled with the corporation. The defendant's name, already acquired by its incorporation, is conclusive of its right to bear it as a franchise conferred by law, which cannot be impeached by private persons nor by the plaintiff created by the same authority. Comity in Georgia will protect plaintiff and defendant in the names given them in the jurisdiction. As far as Georgia is concerned, the right to each franchise and name is conclusively settled.

Boston Rubber Shoe Co. v. *Boston Rubber Co.*, 149 Mass. 436.

American Order, etc., v. *Merrill*, 151 Mass. 558.

The act of incorporation has fixed the name the corporation is to bear and its right to the use of that name is a part of its franchise conferred by law, which no more can be annulled at the suit of private persons than can its franchise to be a corporation. Indeed, it may well be considered that

enjoining the use of its name given by the charter would practically annul its charter, since that is the only name it has authority to use.

Paulino v. *Portuguese Benevolent Association,* 18 R. I. 165.

The grant of both of these charters and these names are contracts between the United States and the parties. If the second charter under which the defendant's claim is an impeachment of the first contract that impeachment can be consistently done by Congress, and this state cannot give any remedy. The second charter is the contract under which the defendants claim their rights, among which is the right to use the name, and this contract between the United States and the second corporation cannot be impeached by the state.

III-P.

RACIAL DISCRIMINATION VIOLATION OF THE FOURTEENTH AMENDMENT.

On the pleadings there was no question about the facts contained therein being true, and no objections by either party as to the insufficiency of the pleadings. The chancellor entered an order dismissing the bill of complainants below, and the Supreme Court affirmed and remanded for the purpose of having a jury to try the law and facts. A "jury" tried the law and facts. It does not appear what was said in the argument to the jury by complainants' solicitors, but the record does show that one of the solicitors testified before the same jury.

Mr. Hamilton Douglas, one of the solicitors, testified and excerpts from his testimony shows:

"I have been frequently approached by negroes on the train, etc." (Rec., 69.) "Several years ago there were three negro men waiters." "Dr. Butler is a negro." "As to the friction or ridicule or complaint that is caused by the negroes having the same name, there is THIS NATURAL ANTIPATHY OF TWO RACES ONE TO THE OTHER, and I resent very much belonging to an order that specifies that its membership is confined to the white people (Rec., 70); I resent very much having my friends and people, etc., joke me about my colored brethren; I resent it very much; I resented it in New Orleans two years ago; these people that made that kind of reference are not members of the Knights of Pythias, of course; a member of the order would not do it." "Whether I have ever known one of the members of the Negro Knights of Pythias claim to be a member of the white Knights, etc. I never took the trouble to sift such a claim." "I cannot tell you how long I have known of the existence of the Negro Order Knights of Pythias." "I have traveled all over the United States, have seen negroes claiming to be K. P.'s from California to Georgia, porters in the Pullman service." (Rec., 71.)

Excerpts from Mr. M. M. Hill's testimony show:

"I have heard of the Knights of Pythias among the colored people previous to my coming to Atlanta; I came in 1890; I saw them on parade in Augusta; it was in 1880, I think; I mean in 1888." (Rec., 62.)

Excerpts from the testimony of Mr. E. P. Burns show:

"I do not recollect now that the negroes have a lodge that they call Capitol City Lodge." "I have not seen any negroes that claimed to be members of the order by special word of mouth." "I became a member of the order in 1890 or 1891." "As to whether there is injury to the business interest of the Knights of Pythias on account of this organization, if you mean 'business interest,' any increase or decrease or any effect on the money they would get in, no, I do not know that it affects the business interests at all." (Rec., 62.)

Excerpts from the testimony of Mr. R. M. Eubanks show:

"I have known of the existence of this Negro Order of Knights of Pythias as long as I have been a member of the order, I suppose ten years, I have heard of parade all over the state," and in speaking of the business interest he says, "The Grand Lodge of Georgia do not do business; it is not in commercial business." (Rec., 64.)

Further, he says, "The injury that the existence of this Negro Order does to the other of allowing its name used in imitation of the real principles by colored people."

In the examination of the record as to the evidence, it is not shown that the complainants below were entitled to relief sought; in fact, the same chancellor had held so in dismissing their bill at the former trial.

With the character of the testimony of Mr. Doug-

las, the counsel for complainants (defendants in error), and the other witnesses, could there be any question why the jury found the facts as it did? On examination of the evidence the questions propounded to the jury and its answers, why did it find in the affirmative to all things favorable to the complainant? As the Supreme Court of Georgia in the 128 Georgia, *supra*, had directed a trial of facts by the jury, it would be expected that the chancellor would overrule the grounds for motion for new trial, in face of the decision of the said Supreme Court. Said Supreme Court held that the plaintiffs should have based their proceedings on the fact that the defendants were colored persons, and that the evidence authorized the finding against the defendants regardless of any consideration of their color.

It is respectfully urged by plaintiffs in error that the evidence did not warrant the verdict of the jury, and the only reason for rendering such a verdict was because of the testimony given as to the negros, and the Supreme Court below erred in its decision as rendered.

Where the authorities are charged with the administration of the law, and thus representing the state itself with a mind so unequal and oppressive as to amount to a practical denial by the state of equal protection of the law which is secured to persons by the broad and benign provisions of the fourteenth amendment of the Constitution of the United States, it is not necessary to specifically allege unjust discrimination. *Yick Wo* v. *Hopkins*, 118 U. S. 356.

In re Virginia, 100 U. S. 339, *Barber* v. *Comelly*, 113 U. S. 27.

III-Q.

LACHES

Independently of the foregoing considerations and indeed, of all other considerations, it is insisted that the defendants in error are not entitled to the relief sought on account of their own acquiescence in the use by the plaintiffs in error of the name under which they were chartered. It is idle, not to say puerile, to contend that the application by the plaintiffs in error for a charter under the state laws, was the first opportunity defendants in error had to make this question of infringement. They could have made the question in 1880, when the first lodge was organized. They could have made it in 1889, when the charter was granted under the same law that granted the charter of the defendants in error. They could have made it in 1886, when the first subordinate lodge was organized in Georgia, all of which actions were done in the open and with the knowledge of the defendants in error, and while these two organizations have gone on dispensing their benefactions side by side for over a quarter of a century, no word of complaint has been heard from the defendants in error until this application for a charter was filed in the Superior Court of Fulton County, in A. D. 1906.

Every witness who testified for the (defendants in error) plaintiffs in the court below swore that they knew of the (plaintiffs in error) defendant's organization and its operation when they joined, and those who testified upon that subject swore that it was impossible to confuse the one with the other and that

no negro or person of color could, by any possibility, enter the organization of the defendants in error.

During the long period of their existence and operation throughout this country in at least twenty-five or more states of the Union, the plaintiffs in error have accumulated a membership of 300,000 persons. (Rec., 105.) In the endowment rank alone from July 1, 1906, to July 1, 1907, they have collected and paid out $554,424.41 and in Georgia alone $180,232.61. (Rec., 105.) They have paid out to widows and orphans in Georgia alone $51,000 a year, besides $9,000 a year expenses in burying their dead. The foregoing facts are undisputed and yet the jury and the court below deciding the case, disregarding the undisputed evidence, found, not as a matter of fact, but as a conclusion of law, and a wrong conclusion at that, that the defendants have not acquiesced in the organization of the plaintiffs in error.

No principle in equity is better established than that the right of action is lost by laches.

As to laches, Civil Code of the State of Georgia, 1911, Sections 3782, 4369 and 4536.

It is submitted that the defendants in error on account of laches should not be allowed relief against the defendants. The evidence shows that the corporation under whose rights the (plaintiffs in error) defendants below are operating, was incorporated and organized in 1889; that before and since that time many branch lodges have been established and are in active operation, large sums of money have been raised, and large membership has been acquired without any protest, until this time, on the part of the plaintiffs.

Civil Code of the State of Georgia, 1911, *supra.*

A lapse of ten years was held to bar a benevolent association from an injunction in Grand Lodge of the *Ancient Order of United Workmen* v. *Graham,* 96 Iowa 592, 31 L. R. A. 133; Thompson on Corporations, 8192. Laches are barred if not stopped in a reasonable time. *Burke* v. *Bishop,* 144 Fed. 838.

A corporation engaged in insurance business, not the assessment plan, allows other persons not incorporated to do similar business under similar plan and name, and withholds, say ten years, to restrain the action of the latter, even assuming that the corporation has exclusive rights to the name and plan, it would be grossly inequitable to allow a right of restraint to be exercised under such circumstances.

Thompson on Corporations, 8196.

The right to enjoin is lost by laches.

Bacon on Benefit Societies, 1904, Sec. 48 A.

Grand Hive L. O. M. v. *Supreme Hive L. O. M.,* 97 N. W. 779; 9 N. W. 26; 88 N. W. 882.

Holt v. *Parsons,* 118 Ga. 895.

Walker v. *Phillips,* 120 Ga. 728.

Reynolds v. *Martin,* 116 Ga. 495.

Hollingshead v. *Bank,* 104 Ga. 250.

Marshal v. *Means,* 12 Ga. 61.

Atkins v. *Hill,* 7 Ga. 573.

Waterlot Co. v. *Bucks,* 5 Ga. 315, and many other cases in the Georgia Digest.

For laches see High on Injunction, Secs. 7 to 10 a, 4th Edition.

City of Elberton v. *Pearl Mills,* 123 Ga. 1.

Whitley v. *James*, 121 Ga. 521.
McWhorter v. *Cherry Ga.*, 121 Ga. 541.
Cole v. *Burke*, 35 Ga. 280.
Knox v. *Yow*, 91 Ga. 367.

As to the doctrine of laches, no arbitrary rule exists, but the question is decided upon the circumstances of each case.

16 Cyc., page 152, and cases cited.

Lapse of time alone, and together with circumstances, especially circumstances injuring the defendant, preclude relief. Prejudice to defendant prevents relief where the change in circumstances is due to the voluntary act of defendant, or the result of delay itself. If plaintiff sleeps on his rights until the progress of events and change of circumstances render it impossible to grant relief with equal justice to defendants, is guilty of laches.

16 Cyc., page 162, and cases cited.

Prince Metallic Paint Co. v. *Prince Mfg. Co.*, 57 Fed. Rep. 938.

"A petition for leave to file an information in the nature of a *quo warranto* against a corporation for using a certain corporate name will not be granted where it appears that the respondent was legally incorporated under such name; that such name is identical, not with the corporate, but with the trade name of petitioner; that the respondent has used the name for ten years without sensibly injuring the petitioner, and that the main injury complained of is one expected to arise from the threatened use of such name by respondent in a particular line of business in which it has not yet engaged."

Boston Rubber-Shoe Co. v. *Boston Rubber Co.*, 149 Mass. 436.

In this last case cited, at page 877, the court says:

> "The respondent has exercised the franchises for ten years and the only injury alleged to have been received by the petitioner is the occasional delay of letters and packages addressed to the Boston Rubber Company, but intended for petitioner."

The court further says:

> "The lapse of time would be a sufficient answer if this ground were relied on."

This, the confusion of mail, is the only fact given of any injury to defendants in error.

The right to an injunction to restrain another corporation from using corporate name of plaintiff may, like the right to any other species of equitable relief, be lost by laches. Also by assent or acquiescence. Mere unreasonable delay will often operate as bar to relief. There are few cases which present no other circumstances. The border land between mere laches and mere staleness of demand is found in those cases where lapse of time is added an element of assent or acquiescence, such as no assertion of a conflicting claim and courts presume assent from lapse of time and failure to assert right. (10 Cyc., 153, 154.)

The familiar rule that he who seeks the aid of equity must act promptly, applies to this class of cases. The rule established by the authorities is, that in order for a corporation to obtain an injunction against another corporation using the same or similar name, it must act promptly on gaining the information. It cannot delay action until the other corporation has acquired valuable rights and innocent persons have dealt with it to the extent that it

would be injurious either to such corporation or to the persons who have dealt with it to grant injunction.

In *Colonial Dames* v. *Colonial Dames*, 60 N. Y. Supp. 302; 173 N. Y. 586; plaintiff made no attempt to enjoin defendant from using the name until several years after organization, when each had large membership and there was no confusion except mixing of mail. Held, that no injunction should issue.

Relief is refused on laches alone (*Richards* v. *McKall*, 124 U. S. 183), quoting as follows:

> "If the case as it appears at the hearing is liable to objection by reason of laches of complainant, the court on that ground will be passive and refuse."
>
> *Sullivan* v. *Portland R. Co.*, 94 U. S. 806.

In the last case it is stated that equity will sometimes refuse relief on account of lapse of time shorter than the period of limitation, and citing other cases.

III-R.

THE OPINION OF THE SUPREME COURT OF GEORGIA IN THE CASE AT BAR.

It will be remembered that three justices were disqualified because members of the order of Knights of Pythias, three others were appointed by the Governor, and one of these was disqualified. (Rec., 20.)

The court states (Rec., 147): "The order of Knights of Pythias of which the plaintiffs (defendant in error) were members was organized by Justice H. Rathbone in Washington on Feb. 19, 1864,

and has been in existence throughout the United States, using said name." The court was in error in that the plaintiffs, (defendants in error) were members of the Order of Knights of Pythias established in 1864 by Justice H. Rathbone. There were four distinct periods of existence of the Order of Knights of Pythias and not a continuous period.

The first February 19, 1864, at the organization of an order of Knights of Pythias by Rathbone and associates; the second, at the incorporation August 5, A. D. 1870, of a Supreme Lodge Knights of Pythias of the World by Jos. T. K. Plant *et al.*, (Rathbone was not one of them); the third, at the expiration of said corporate existence August 5, A. D. 1890, a Supreme Lodge and its subordinate bodies and members became unincorporated bodies; the fourth, a Supreme Lodge Knights of Pythias, was incorporated under special act of Congress June 29, A. D. 1894, and this only is the plaintiffs in error corporation.

The establishing of Grand Lodges in the various states in 1864, 1867 and 1868, refers to the organization of said lodges in an order of Knights of Pythias. The same applies to the incorporation of August 5, A. D. 1870, and could not be the plaintiffs in error corporation herein.

The said court states also (Rec., 147): "The plaintiff's order (defendants in error) of Knights of Pythias was incorporated by an act of Congress approving June 29th, 1894" this is true but the statement goes further "by which all the rights, powers and liabilities of the Supreme Lodge Knights of Pythias, incorporated on August 5, 1870, were pre-

served, and made to survive to the politic and corporate which was created by the act." This is the first Supreme Court that has held such. In *Knights of Pythias* v. *Withers*, 177 U. S. 260, this court in its statement of the case said that this body of Act of June 29, A. D. 1894, was incorporated as the successor of a former corporation under Act approved May 5, A. D. 1870, but this question was not an issue, nor did the court pass upon it save by reference in its statement.

There are other Supreme Courts that have held to the contrary, to wit: that the Supreme Lodge Knights of Pythias now in existence was incorporated June 29, A. D. 1894. *Supreme Lodge Knights of Pythias* v. *Improved Order Knights of Pythias*, 113 Michigan 140.

The Supreme Court was in error in its opinion about the date of the incorporation of defendants in error, plaintiffs below, and the succession of corporate existence, and this opinion is not borne out by the record, decisions nor acts of the said Supreme Lodge itself.

The court further says:

> "The Supreme Constitution of defendants (plaintiffs in error), it appears that the Order Knights of Pythias was organized by Rathbone and others in the city of Washington, D. C. Feb. 19, 1864, then in parenthesis the court says (this is the date of the founding of the plaintiffs order)".

The plaintiffs below (defendants in error) has the erroneous idea that they are the only ones entitled to the name Knights of Pythias. Besides the parties to this suit, there is another body of Knights

of Pythias whose headquarters are in Michigan, as is shown in the 113 Michigan *supra* and the Colored Knights of Pythias, 92 Miss. 506. Under the law it is contended that a number of different orders may or are entitled to the use of a name with the words Knights of Pythias, as long as their orders do not confuse with the others. Reference may be made to the cases where Order of Forresters, Macabees, Odd Fellows, Masons, Woodmen and many others, among the fraternal orders have all some part of their name alike and additional words to denote their difference and to prevent confusion, and the Catholics, Episcopalians, Methodist, Baptist, Presbyterian and many other religious organizations all have a common reference to the generic name.

The said court refers to an incident and says "at a session of the Supreme Lodge of the Knights of Pythias *of the World* (plaintiffs order) held at Richmond, Va. March 8th 1869, an application from a body of colored citizens of Philadelphia Pennsylvania praying that they might be permitted to have and enjoy the great benefits of the Grand Order of Knights of Pythias was refused on account of their color." (Rec., 149.)

This incident occurred in March, 1869, which was eleven years before the organization of the plaintiffs in error order, and twenty years previous to the incorporation thereof. The place of application was at Richmond, Virginia, by citizens of Philadelphia, and the organization of plaintiffs in error body was in Vicksburg, Mississippi in 1880 (Rec., 48) by Mississippians. This should be taken just the same as the reference to the organization of the order of

Knights of Pythias by Rathbone, simply as historical facts, after this however the history is recited and down to where the plaintiffs in error order was established by Lightfoot, March 26, 1880, at Vicksburg, *the date of the Pythian Period.* (Rec., 131.)

The court also refers to the Pythian period which is likewise true as to the Order of Knights of Pythias, but the same supreme constitution, and the same chapter herein referred shows the full name of plaintiffs order, and anniversary day of the order March 26, A. D. 1880, being the date of the organization of plaintiffs in error order. (Rec., 131.)

The court does not place much weight to the evidence on confusion and dismisses same by saying "but this confusion is not shown to any great extent." The Elks cases cited by the court do not apply, as the Elks is a social and business organization, and in these cases confusion had arisen. It maintained certain business institutions as in the Tennessee case, 118 S. W. Rep. 389; confusion had arisen as to the non-delivery of an assignment of whisky as in the Pennsylvania case, 39 Sup. Ct. Rep. 365; and confusion had arisen and there was imminent danger that the objects and purposes for which it was incorporated would be interfered with as in the New York case, 60 Misc. Rep. 223.

There are other criticisms that could be made of said opinion, but the same are covered under different subject heads.

The law is as decided by the Court of Appeals in the District of Columbia. *The Most Worshipful Grand Lodge, etc.,* v. *Grimshaw et al.,* 34 Appeal Cases, 383 D. of C.:

"Courts of equity do not exercise jurisdiction to inquire into and adjudicate the right of different associations for charitable or religious objects to hold themselves out to be the regular and only accredited representatives of some particular order or religious system. There must be some pecuniary injury resulting from the use of a name that may have been adopted by another to warrant inquiry and justify relief. The injury must not be fanciful or sentimental, but real. It must be substantial, and such as a court of equity upon principles of justice will interpose to prevent."

III-S.

In Conclusion.

Cresswill *et al.*, plaintiffs in error, were officers of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia. (Rec., 39.)

This order had existed in the State of Georgia since June, A. D. 1886 (Rec., 48); parading upon the public streets of the cities in Georgia in uniform and regalia (Rec., 64); signs displayed showing their meeting places; and increased in membership until in Georgia there were 11,805 members; collected in the state $180,232.21; paid out to widows and orphans $148,680; the average collections in Georgia was $51,000 a year, excluding burying the dead, which adds $9,000 more. (Rec., 64.) The members of this order are colored men (Rec., 47) from 19 to 45 years of age (Rec., 105); rituals of the order can be purchased at Sears-Roebuck & Co., Montgomery Ward & Co. of Chicago. Emblems and flags can be purchased

without restriction, and badges, pins and jewelry of adornment can be purchased at any first-class jewelry store, in pawn shops and elsewhere. (Rec., 106.) The laws enacted by said order are such as are common to any fraternal body, and Knights of Pythias organizations; they are not copyrighted. (Rec., 108.) In the United States the same conditions prevail and the order has been in existence since A. D. 1880 (Rec., 48); has a membership of 300,000 members; and amount of money collected from July 1, 1906, to July 1, 1907, was $554,424.21. (Rec., 105.) The members are taught to be law-abiding citizens, of good moral character. (Rec., 105.)

As follows such an organization large amounts of personal and real property are acquired. The supreme body of the order was incorporated October 10, A. D. 1889, and reincorporated December 14, A. D. 1903, as hereinbefore stated; the body was also incorporated under Insurance Act of Congress for District of Columbia (Rec., 114), and the subordinate bodies do business by rights conferred upon them by their superior bodies.

These conditions prevailed when Cresswill *et al.* as officers, etc., petitioned to be incorporated, and when the defendants in error filed a bill for injunction asking that articles of incorporation be not granted.

The petitioners desired further relief, which was granted, namely, prohibiting the using of the name with the words Knights of Pythias or Knights of in conjunction with Pythias; prohibiting the wearing of regalia, pins, emblems and articles of jewelry for

adornment, and other relief ~~that~~ that practically prevented plaintiffs in error from carrying out their contract necessary in the discharge of their business; contract of fraternal insurance with their members (Rec., 108), also articles of incorporation under insurance laws of District of Columbia Act of Congress (Rec., 114), and at one stroke wiped out said organization, because they ask for incorporation under the laws of Georgia. Again, this would also prevent the existence of the supreme body from existing, to wit: The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, a corporation organized under the federal laws.

It does not seem that where the two organizations have existed by each other's side in Georgia no confusion, one order composed of colored men and the other of white men, such orders, while fraternal, yet social in its nature, make the line of demarcation well drawn, that supersensitiveness should not be the controlling spirit, and it would be inequitable and unjust to cause the organization of plaintiffs in error to cease to exist, especially where the members thereof had a right to believe, as is true that they should receive the protection of the power that created it and them under the laws of Congress.

This case is one of the first, if not the first, where one organization attempts to wipe out of existence the other, because "there is this natural antipathy of two races one to the other" (Rec., 70) (testimony of attorney for defendants in error). The counsellor for the defendants in error, plaintiffs below, first brought suit, then testifying, and no doubt made his

argument made to the jury, and we have in this chancery cause of such a nature a jury in the Superior Court of Atlanta trying the case according to the law and the facts. On an examination of the record it will be readily seen that the jury did not conform their judgment to the law and facts; and it is respectfully urged that the Supreme Court of the State of Georgia erred in its decision as so rendered.

Wherefore, for these reasons, the plaintiff in error respectfully prays that the judgment of the Supreme Court of the State of Georgia be reversed, etc.

Respectfully submitted,

C. L. Pettigrew,
Samuel A. T. Watkins,
Counsel for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.—No. 235.

CHARLES D. CRESSWILL, *et al.*,
Plaintiffs in Error,

vs.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA, *et al.*,
Defendants in Error.

Writ of Error to the Supreme Court of the State of Georgia.

Supplemental Brief for Plaintiffs in Error.

Purpose of this Supplemental Brief.

The purpose of this Supplemental Brief is not so much to add to the Main Brief submitted in this case as to present certain of the arguments which

are contained in that brief in a somewhat different way, and to emphasize some of the facts of the case in connection with the arguments which counsel wishes to press upon the Court in this brief and upon the oral argument.

Statement of Facts.

The Main Brief contains a complete and accurate statement of the case, and only the salient facts upon which the arguments to be presented in this brief are based will be here stated, as briefly as possible, by way of introduction and for convenience of reference.

The defendants in this suit, who are now the plaintiffs in error, on or about the 1st day of June, 1906, filed a petition in the Superior Court of Fulton County in the State of Georgia, for an order incorporating them, their associates and successors, as a social and benevolent association, under the corporate name of "The Grand Lodge, Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia" (fols. 61-64).

The plaintiffs in error are the officers of an unincorporated association which is a member of the order of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia (charter, fols. 288-289), an order established by and among the colored people alone, including the negro and Asiatic races, for the purpose of disseminating friendship, charity and benevolence. This order had its inception in the State of Mississippi in 1880 and has been in active operation ever since. The association represented by the plaintiffs-in-error was organized

and begun work in June, 1886, and has existed ever since (fols. 99-101).

On October 10, 1889, a central governing body, or Supreme Lodge, of the order, was incorporated in the District of Columbia in pursuance of the act of Congress of the United States, approved May 5, 1870 under the corporate name of "The Supreme Lodge, Knights of Pythias of North and South America, Europe, Asia and Africa" (fols. 99-100); Certificate of Incorporation, (fols. 229-232). This corporation immediately began to organize and kept on organizing branch lodges in the different states of the United States until it was reorganized under the act of Congress of 1870, without breaking its continuity, on December 14, 1903, in order to more perfectly comply with the laws of the various states relating to fraternal societies doing business therein. The reorganization was under the name of "Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia" (fols. 72½, 100); Certificate of Reincorporation, (fols. 233-240). There are now branch lodges in twenty-five or more of the United States (fols. 100, 220) and in other countries (fol. 219).

Shortly after the plaintiffs in error had filed their petition for incorporation with the Georgia court this suit was commenced by the filing, with the same court, of the petition herein, wherein the defendants in error alleged that their order had a prior and exclusive right to the use of the words "Knights of Pythias," which form a part of its corporate name, and that the use of these words as a part of the name of either the unincorporated association represented by the plaintiffs in error or by the proposed corporation was and would be a violation of their right to the exclusive use of those words, and

prayed in effect, that the plaintiffs in error might be enjoined from prosecuting their petition to be incorporated under the name set forth therein, "The Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia," or under the name of the petitioner, the "Grand Lodge Knights of Pythias," or any colored institution thereof, or under any name embracing the name "Pythias" in conjunction with the words "Knights of," and from using any of these names as the name of the unincorporated association. The petition also alleged that the members of the association represented by the plaintiffs in error were using and wearing emblems and insignia identical in color and design with the emblems and insignia of the defendants in error, and prayed that this should be enjoined (fols. 43-59).

The right of the defendants in error to a prior and exclusive use of the words "Knights of Pythias," if any exists, is to be deducted from the following facts:

On August 5th, 1870, a beneficial association was incorporated in accordance with the act of Congress of May 5th, 1870, under the name and style of "The Supreme Lodge of the Knights of Pythias of the World," (fol. 45); Certificate of Incorporation (fols. 152-155). The certificate of incorporation was twice amended by virtue of the aforesaid act of Congress (fol. 45); Amended Certificates of Incorporation (fols. 156-161).

It is alleged in the petition that, on February 19th, 1864, (which was about six years before the incorporation of this beneficial association), in Washington, D. C., Justus H. Rathbone and his associates organized a society, having for its ultimate object Friendship, Charity and Benevolence,

to be known and style as the "Knights of Pythias," that subordinate lodges were organized in various of the states of the United States, and that this organization has been designated and known as the Order of the Knights of Pythias, and is now so designated and known. It is also alleged that this was the Order which was incorporated under the act of Congress of 1870 on August 5th, 1870 (fols. 43-45). The answer alleges that the defendants (plaintiffs in error) "for want of information sufficient to form a belief * * * "are unable either to admit or deny" these allegations (fol. 72). And there is no evidence in the case to support the allegations.

The period of the corporate existence of "The Supreme Lodge of the Knights of Pythias of the World," which was incorporated on August 5th, 1870, was, by the terms of the statute, limited to twenty years from the date of its creation, and it therefore ceased to exist as a corporation on August 5th, 1890.

Nearly four years atfer the expiration of this charter, by an act of Congress, approved June 29th, 1894, a number of persons, officers and members of the Supreme Lodge Knights of Pythias, and their successors, were incorporated by the name of "The Supreme Lodge Knights of Pythias" (fol. 45); act of Congress (fols. 164-165).

The connection between this corporation created in 1894, under the name of "The Supreme Lodge Knights of Pythias" with the corporation created in 1870 under the name of "The Supreme Lodge of the Knights of Pythias of the World," the charter of which expired by limitation in 1890, does not clearly appear, if, indeed, it can be said to appear at all. The allegations of the petition, giving them

their literal meaning, are to the effect that the corporation created in 1870 was incorporated in 1894 by an act of Congress (fol. 45). But in answer to these allegations the defendants say that "for want of information sufficient to form a belief, they are unable either to admit or deny" them (fol. 72). And there is no evidence in the case to show that the "officers and members of the Supreme Lodge Knights of Pythias," who were incorporated by the act of Congress of 1894, by the name of "The Supreme Lodge Knights of Pythias," (fol. 164) constituted the corporation which had been created in 1870, under the name of "The Supreme Lodge of the Knights of Pythias of the World," and which expired by limitation in 1890.

Furthermore, there is no allegation in the petition and no evidence in the record that an unincorporated body, known as the Supreme Lodge Knights of Pythias, or by any other name, existed as the successor of the corporation created in 1870 from the time when the charter of that corporation expired in 1890 until 1894, when it was incorporated by the act of Congress of June 29, 1894, by the name of "The Supreme Lodge Knights of Pythias."

ARGUMENT.

I.

The decision of the court below denies the plaintiffs in error rights and privileges to which they are entitled under a statute of the United States, and the decision violates Section 1 of Article 4 of the Constitution of the United States.

These federal questions were adequately presented to the courts below, by the 28th and 29th (fol. 122) and by the 39th and 40th (fols. 125-126) of the grounds upon which the motion for a new trial was based.

The Supreme Court of Georgia disposed of these claims of the plaintiffs in error in the following words: "This suit was brought against Cresswill *et al.* as individuals acting and seeking a charter. The Supreme Lodge of the order of which they claim to be members has never been made a party to this case, and is not here asserting any corporate rights" (fol. 326).

It is true that the plaintiffs in error represent an unincorporated association, but that unincorporated association is one of a number of constituent and integral parts of The Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, incorporated under the act of Congress of May 5, 1870, and having a Supreme Lodge as the central governing body.

And the unincorporated Grand Lodge for the jurisdiction of Georgia represented by the plaintiffs in

error has a charter from the Supreme Lodge (fols. 288-289) by which it is constituted a member of the Order.

By the charter of this fraternal and benevolent order the Supreme Lodge was given the power and authority to establish and charter Grand Lodges and other subordinate bodies at such times and places and in such manner as might be provided by the constitution and by-laws of the corporation (fols. 232, 236). And by the Supreme Constitution also (fols. 243 *et seq.*) this power is reserved to the Supreme Lodge (fol. 251).

This gave the unincorporated Grand Lodge represented by the plaintiff in error the rights conferred upon it by the charter granted it by the Supreme Lodge, and among these rights is the right, expressly conferred upon it by the charter, to be "hailed by the title of Grand Lodge, Jurisdiction of Georgia, of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia" (Fol. 288). This right being claimed under a charter granted by a corporation which derives its corporate existence and powers from a statute of the United States, and which claims the right to use its present name by virtue of its certificate of incorporation executed under that statute, it follows that the Grand Lodge, though an unincorporated body, claims the right to exist under and use the name of the corporate parent body by virtue of the statute of the United States just as effectually as does the parent body. The only difference is that one claims directly and the other indirectly. But the ultimate authority of both the parent body and this Grand Lodge to exist and to use the name which they are using is to be found in the statute of the United States.

Associations of the character of the order to which the unincorporated body represented by the plaintiff in error belongs are peculiarly constituted. Their organization is radically different from that of any other association recognized by the law. There is, therefore, little or no opportunity to reason by analogy from the law applicable to other associations in determining the rights, duties and liabilities of the different constituent members of these associations. And the small existing body of law which relates directly to these associations concerns itself almost wholly with the relations of their different members between themselves, so that the question here presented for decision is one of first impression.

Fraternal benevolent societies organized on the lodge system, broadly speaking, usually have a Supreme Lodge or Council, which is the central governing body, Grand Lodges or Councils, which derive their powers from and are subject to the authority of the central governing body, and subordinate Lodges or Councils, which are in turn created and supervised by the Grand Lodges or Councils. The Association, Society, or Order is neither the first, the second nor the third of these bodies, but all of them combined.

This is true of the Order to which the plaintiffs in error belonged—not as it was originally constituted, but as it was reconstructed by the reincorporation. (Certificate of Reincorporation, fols. 233-238). By the reincorporation the corporate body is the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, of which the Supreme Lodge, Grand Lodges and Subordinate Lodges are members. These various bodies, supreme, grand or subordinate, are in no sense sep-

arate or independent. They are only inter-related parts of a single, comprehensive, unified system. Grand Lodge of Connecticut v. Grand Lodge of Massachusetts, 81 Conn. 189, 70 Atl. 617. Therefore the rights and privileges which were derived from the incorporation of the Order under the act of Congress, which included the right to use the name designated in the certificate of incorporation, accrued to all of the constituent members of the Order, including the body represented by the plaintiffs in error. If so, the unincorporated Grand Lodge of which the plaintiffs in error are officers claims the right to use the name which it has been using, and which the trial court below enjoined it from using, under a statute of the United States. And it also follows that the decision of the courts below violates Section 1 of Article 4 of the Constitution of the United States in that they do not give full faith and credit to the record of the incorporation of the association of which this Grand Lodge is a constituent and integral part.

II.

The defendants in error have no standing which entitles them to maintain this suit and, therefore, have no right to the injunction which was granted them by the courts below.

It will be observed from the foregoing statement of facts that the defendants in error, in order to establish their claim to the exclusive use of the words "Knights of Pythias" by right of prior appropriation, attempt to connect themselves with an

unincorporated association, known as the Knights of Pythias, established in 1864, by Justus H. Rathbone and his associates and also with the association incorporated in 1870 under the name of "The Supreme Lodge Knights of Pythias of the World." But the allegations of the petition which assert these claims are traversed in the answer by the allegation that the "defendants . . . for want of information sufficient to form a belief . . . are unable either to admit or deny" them.

This is an allegation to the effect that the plaintiffs in error have no knowledge and no belief as to the truth of these allegations of the petition, and is entirely sufficient to put the facts pleaded in issue.

But although the defendants in error were thus put to the proof of their allegations, they have wholly failed to produce any evidence to establish the most essential of them. There are two references in the evidence to the fact that Justus H. Rathbone founded a fraternal and benevolent order known as the Knights of Pythias (fols. 127, 274), but it can hardly be said that there is any evidence of the fact. It may, however, be conceded that this fact is a matter of general knowledge. Still it remains true that there is no evidence whatever in the record to prove that the association which was established by Rathbone in 1864 was the same association that was incorporated in 1870 as "The Supreme Lodge of the Knights of Pythias of the World." Neither is there any evidence that this corporation, on the expiration of its charter in 1890, was succeeded by any unincorporated body, and that the unincorporated successor was the association which was incorporated in 1894 by an act of Congress under the name of "The Supreme Lodge Knights of Pythias," the intervening defendant in

error and the corporation under which the other defendant in error, the Grand Lodge Knights of Pythias of Georgia, claims the rights asserted by it in this suit.

The rights of the defendants in error, therefore, so far as the record in this case shows, do not antedate the year 1894. Five years before that time, in 1889, the corporation from which the plaintiffs in error obtained their charter, by which they claim, among other things, the right to use the name which they have been and are using, had been created under the act of Congress of 1870. It is true that at the time when this corporation filed its certificate of incorporation, wherein the name "The Supreme Lodge, Knights of Pythias of North and South America, Europe, Asia and Africa," was adopted as the corporate name, there already existed a corporation which had been created under that act by the name of "The Supreme Lodge of the Knights of Pythias of the World," and that the statute provides that it "shall not extend to nor apply to any association or individual who shall, in the certificate filed with the recorder of deeds, use or specify a name or style the same as that of any previously existing incorporated body in the District of Columbia." Assuming that the name adopted for the corporation created in 1889 infringed upon the name of the previously existing corporation, a question which will not be discussed in this brief for the reason that it is adequately treated in the Main Brief, that corporation might have successfully asserted its right to the exclusive use of the name. And the defendants in error might do so could they identify themselves with, and show that they are the successors of that corporation.

Obviously, without such evidence, and there is none in the case, the defendants in error have no standing enabling them to maintain this suit and, therefore, are not entitled to the injunction which has been granted them in this case.

III.

It is respectfully submitted that the judgment of the court below should be reversed.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

CHARLES D. CRESWILL et al.,
Appellants,

v.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA et al.,
Appellees.

Writ of Error to the Supreme Court of Georgia

STATEMENT, BRIEF AND ARGUMENT OF COUNSEL FOR THE APPELLEES

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

No. 235

CHARLES D. CRESWILL et al., Appellants, v. GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA et al., Appellees.	Writ of Error to the Supreme Court of Georgia

STATEMENT, BRIEF AND ARGUMENT OF COUNSEL FOR THE APPELLEES

QUESTIONS INVOLVED.

It seems to appellees that the only possible points at issue in the case, for this Court to decide *as claimed by appellants*, are as follows:

1. That the Court below erred in not stating to the jury that appellants claimed their right to use their name under articles of incorporation obtained under the authority of the general act of incorporation of Congress of May 5, 1870, and that there was therefore a contest between Federal corporations and that therefore appellants had not received full protection under that part of Article 4 of the Constitution which requires that "full faith and credit shall be given in each State to the public acts,

records and judicial proceedings of every other State." This is denied by appellees because a decision on the point would have thrown no light on the controversy and because the record does not show that any corporation on either side is party to these proceedings.

2. That rights of citizens have been taken without due process of law, appellants' contention in this particular being set forth in their grounds of error 5 and 6, which contention is denied by appellees.

STATEMENT OF THE CASE.

For a statement of the facts of the case, we adopt the statement made by the Supreme Court of Georgia through Justice Edwards, beginning with the last paragraph on page 146 of the printed record and ending with the second paragraph of page 150, reported in Vol. 133 of Georgia State Reports, beginning in the middle of page 838 and ending in the middle of page 843.

"Charles D. Creswill and others [referring to appellants] "made application to the Superior Court of Fulton County to "be incorporated and made a body politic for the full period "of twenty years, with the usual privilege of renewal at the ex- "piration of said term, under the corporate name and style of "the Grand Lodge Knights of Pythias of North America, South "America, Europe, Asia, Africa and Australia, jurisdiction "of Georgia. The petition set forth that the object of petition- "ers [referring to appellants] was not pecuniary gain, but "was the social and benevolent benefit of its members and their "dependent relatives. They asked to be allowed to organize "and charter subordinate lodges in this State and to provide an "endowment fund. [Record p. 29, Exhibit B.]

"The defendants in error [referring to appellees], the Grand "Lodge Knights of Pythias of Georgia, T. H. Nickerson, D. J. "Bailey, John P. Ross, William H. Leopold, R. C. Norman, "C. M. Walker, B. D. Brantley and George T. Cann, filed in "said Superior Court a petition seeking to enjoin the plaintiffs "in error from prosecuting said application to be incorporated "under the name set forth in the petition for charter, or under "the name, 'Grand Lodge Knights of Pythias of Georgia', or any "colorable imitation of such name, and from using any name

"embracing the word 'Pythias', in conjunction with the words "'Knights of,' or any name which is a colorable imitation of "said Grand Lodge Knights of Pythias of Georgia, and from "using and wearing emblems and insignia like or a colorable "imitation of the emblems and insignia of petitioners; and for "general relief. The court granted a rule nisi and a tem- "porary restraining order. [Record pp. 42 to 45 inclusive.]

"On the hearing, the Supreme Lodge Knights of Pythias "was made a party plaintiff and it adopted the averments and "prayers of the original petition. [Record pp. 42 to 45 inclu- "sive.]

"Without going fully into the details of the plaintiffs' pe- "tition, [referring to appellees], it is sufficient to state that "the following is alleged: The order of Knights of Pythias of "which they were members was organized by Justus H. Rath- "bone in Washington, D. C., on February 19, 1864, [record "p. 22], and as a voluntary fraternal society adopted the name "'Knights of Pythias' and has since been in continuous ex- "istence throughout the United States, using said name.

"The first Grand Lodge known as the Grand Lodge Knights "of Pythias [meaning appellees] of the District of Columbia "was organized in 1864. The Grand Lodge of Pennsylvania "[meaning appellees], was organized in 1867, and the Grand "Lodge of New Jersey [appellees], and the Grand Lodge of "Maryland [appellees], were each organized in 1868. These "grand lodges organized the Supreme Grand Lodge Knights "of Pythias [appellees] for the United States on August 11, "1868. Since then, the plan has been to organize and main- "tain subordinate lodges in the cities and towns throughout "the United States and a grand lodge in each of the States and "Territories of the United States, subject to and forming a "part of the Supreme Lodge of the Order from which subordi- "nate lodges and grand lodges obtain authority and to which "they owe allegiance.

"The first subordinate lodge [referring to appellees] in "Georgia was organized in 1869, [record p. 23], and the Grand "Lodge of Georgia, [referring to appellees] was organized in "1871. [Record pp. 29 and 101]. The Supreme Lodge was in- "corporated under the laws of the United States in the District "of Columbia August 5, 1870 [record pp. 72 and 73]; its

"articles of incorporation were amended under said laws Octo-
"ber 5, 1875 [record pp. 73 to 75], and again on May 5, 1882
"[record p. 75], the name of the order being preserved in its
"entirety.

"The plaintiffs' order of Knights of Pythias [referring to
"appellees] was incorporated by an act of Congress approved
"June 29, 1894 [record p. 77], by which all the rights, powers
"and liabilities of the Supreme Lodge Knights of Pythias, in-
"corporated on August 5, 1870, were preserved and made to
"survive to the body politic and corporate which was created
"by the act. This act of 1894 was amended by an act of Con-
"gress approved June 7, 1900 [record p. 78], the terms of this
"amending act being to make valid all meetings of the legisla-
"tive bodies of the order held outside of the District of Colum-
"bia. The order of plaintiffs [meaning appellees] embraces
"more than 650,000 members, and the subordinate lodges in
"Georgia own assets valued at $160,319.08. There are in
"Georgia 143 sections of the insurance branch, with 2,327
"members carrying an insurance protection of $4,113,500.00.
"[Record p. 95 and p. 103.]

"The first lodge of the defendants' order [referring to ap-
"pellants] was organized in Mississippi in 1880. Their Su-
"preme Lodge was organized on Oct. 10, 1889. [Record p.
"109 and p. 35.] Their first subordinate lodge in Georgia was
"organized in 1886 [record pp. 138-139], and their Grand
"Lodge for Georgia was organized in 1890.

"The defendants by their answer neither affirmed nor denied
"the historical part of plaintiffs' [referring to appellees] pe-
"tition, as above set forth [record p. 34]. They denied [record
"(3) p. 34, in connection with (11), (12), (13), (14), pp. 26
"and 27 record] that their order had sprung from the plaintiffs'
"order, that they had received any authority from plaintiffs'
"order to organize lodges, and that their name is identical with
"the name of the plaintiffs' order, or is an imitation of the
"same. They set up that the Supreme Lodge Knights of Py-
"thias of North America, South America, Europe, Asia and
"Africa was incorporated on Oct. 10, 1889 [record p. 35], by
"virtue of the act of Congress of the United States approved
"May 5, 1870, and organized under said charter, lodges
"throughout the United States and other countries; that said

"corporation was reincorporated on the 14th day of Decem-
"ber, 1903 [record p. 41], in order to more perfectly com-
"ply with the laws of the various States relative to fraternal
"societies doing business therein, which reincorporation was
"in the name last above mentioned, with the suffix 'Australia';
"that this incorporation has been in active work ever since its
"organization in 1889; that the sole purpose of defendants
"[referring to appellants] in asking incorporation under the
"laws of Georgia is to form a more perfect union among the
"subordinate lodges, with a governing head which would have
"authority and be amenable to the laws of Georgia and be
"able to better enforce obedience among its several members
"and subordinate lodges; that its signs, symbols, emblems, in-
"signia and other paraphernalia have been adopted by said
"corporation honestly and fairly, and it has a perfect right
"thereto; and that its membership in the United States numbers
"80,747, and in Georgia 11,805.

"The case came on for a hearing on the motion for prelim-
"inary injunction, upon substantially the above record, when
"injunction was refused. The plaintiffs brought the case by
"bill of exceptions to this Court. The judgment of the Court
"below was by this Court affirmed with direction. Grand
"Lodge Knights of Pythias *v.* Creswill, 128 Ga. 775. By ref-
"erence to this decision, it will be seen that all questions of
"law or fact on the final trial of the case, except as therein
"ruled, were left open to be then determined; the only ques-
"tion settled being the point of want of proper parties plain-
"tiff, which point it was held had been adjudicated in the
"Court below, no exception to the ruling allowing amendments
"for this purpose having been taken.

"The case coming on for trial in the Court below, a verdict
"was rendered in favor of the plaintiffs [appellees] against the
"defendants [appellants], and decree was entered as prayed
"for by the plaintiffs. The defendants moved for a new trial
"upon various grounds, which motion having been overruled,
"the case was again brought to this Court [Supreme Court of
"Georgia], for review. The original motion for a new trial
"and the amended motion contained forty grounds. The view
"we take of this case renders it unnecessary to discuss in de-
"tail the various grounds of the motion for a new trial, ex-

"cept those complaining that the verdict is contrary to the law "and without evidence to support it. The record in the case "is quite voluminous, but is made up largely of exhibits at- "tached to the plaintiffs' petition and the defendants' answer, "each setting out copies of proceedings to incorporate and rein- "corporate under the various acts of Congress. Each side has "also put in the record certified copies of the constitution of "the Supreme Lodges and the Grand Lodges and the statutes, "declarations of principles, and much statistical matter per- "taining to each other.

"Neither plaintiffs' [referring to appellees] nor defendants' "order has ever been incorporated in the State of Georgia. "Seniority in the selection of the name, seniority of organiza- "tion under the name with its continued use, and seniority of "incorporation under the general laws enacted by Congress and "seniority of organization in Georgia are all in favor of the "plaintiffs' [referring to appellees'] case. It is well estab- "lished by the evidence that the word 'Pythias' is the dis- "tinctive word in the name of both orders. This word is used "indifferently in all the designations made by both orders touch- "ing its name and order. While the defendants' order in its "original incorporation added the suffixes 'of North America, "South America, Europe, Asia and Africa', and in a subsequent "incorporation added 'Australia', the testimony oral and docu- "mentary shows that its order was called and known to the "public as the order 'Knights of Pythias', 'K. P.s', etc. In the "'Declaration of Principles' put in evidence by the defendants "[referring to appellees, p. 79 of record], it is declared that "'the order of the Knights of Pythias is founded in Friend- "ship, Charity and Benevolence', and the suffixes beginning "with North America, etc., are not used. In the 'Supreme Con- "stitution' introduced by defendants [referring to appellees'] "in its narrative touching the early progress of the 'Knights "of Pythias', it is recited that 'the order was organized by J. "H. Rathbone and others in the City of Washington, D. C., "February 19, 1864'. (This is the date of the founding of "the plaintiffs' [referring to appellees] order.)

"It is further recited, in the history of the early progress of "the defendants' order that 'at the session of the Supreme "Lodge of the Knights of Pythias of the World' (plaintiffs'

"[referring to appellees'] order), held at Richmond, Va., "March 8, 1869, an application for a charter from a body of "colored citizens of Philadelphia, Pa., [record p. 131] pray- "ing that they [appellants] might be permitted to have and en- "joy the great benefits of the Grand Order of the Knights of "Pythias was refused on account of their color. It is also fur- "ther recited in the by-laws of the defendants' [referring to "appellants'] order introduced by the defendants [record p. "131]: 'the order of Knights of Pythias having instituted "and established on the 19th day of February, 1864, the Py- "thian period is hereby declared to date therefrom'.

"It is conceded that the emblems publicly used by the de- "fendants' order are identical with those worn and used by the "plaintiffs' order, this fact being testified to by Creswill, one of "the defendants. [Appellants.] Some confusion has arisen in "Georgia in the delivery of the mail of the plaintiffs' order, but "this confusion is not shown to any great extent. On one oc- "casion, a member of plaintiffs' [referring to appellees'] order, "seeking the 'K. P. Hall' of his own order, was directed to "the 'K. P. Hall' of the defendants' order.

"There is really very little if any material conflict of evi- "dence between the parties. As above stated, the jury found "in favor of the plaintiffs, [appellees], this finding being: that "the proposed corporate name of the defendants is an infringe- "ment upon the name of plaintiffs' [referring to appellees'] "association; that such infringement injured plaintiffs in their "property right in their name; that this infringement is of "fraudulent purpose and design; that the emblems or insignia "used by the defendants are the same as those used by the plain- "tiffs, and such use injures plaintiffs in their property right; "that the plaintiffs have not acquiesced in the use by defend- "ants of the name and insignia; that since the organization of "the order represented by petitioners, and its introduction in "the State of Georgia, it has been the order of the Knights of "Pythias, and its members have been known as Knights of "Pythias or Pythian Knights; that 'Pythias' is the distinctive "word in the name of the order represented by plaintiffs [re- "ferring to appellees], which carefully distinguishes it from "the name and style of fraternal orders in the State of Geor- "gia and in the United States, and the name set forth in de-

"fendants' petition for incorporation is substantially identical "with the name and style of petitioners, the Grand Lodge "Knights of Pythias of Georgia; that the name set forth in de- "fendants' [referring to appellants'] petition for incorporation "is a colorable imitation of the name and style of petitioners, "the Grand Lodge Knights of Pythias of Georgia; that the "use by the defendants and their associates of the name under "which they are seeking incorporation would work a fraud upon "the plaintiffs and their associates and the public, in that the "name under which defendants propose to incorporate is a col- "orable imitation of the name of the order of plaintiffs.

"The pleadings of the appellees contained no reference to "the social status of the appellants or their color. The appel- "lants in an amendment to their original answer set up that "the members of appellants' order are members of the negro "race and that the order of appellees is made up of members "of the Caucasian race. The trial judge in his instructions to "the jury made no reference to the matter set up by this amend- "ment on the part of the appellants or to the racial or social "status of appellants or appellees." [Record pp. 47 and 156.]

BRIEF OF ARGUMENT AS TO FEDERAL QUESTIONS.

1. That there is no Federal question involved.

(a) That the appellants have had such trial as is authorized by law and have not been deprived of property without due process of law.

Central Land Co. *vs.* Laidley, 159 U. S. 103.
Morley *vs.* Lakeshore & M. S. R. Co. 146 U. S. 162.
Bergeman *vs.* Butcher, 157 U. S. 655.
Knox *vs.* Exchange Bank, 12 Wall. 379.
Walker *vs.* Sauvinet, 92 U. S. 90.
Slaughter House cases, 16 Wall. 36.
Bradwell *vs.* Illinois, 16 Wall. 130.
Bartemeyer *vs.* Iowa, 18 Wall. 130.
Hurtado *vs.* California, 110 U. S. 516, 537.

(b) That a State may make restrictions on corporations before permitting them to do business, even though they were Federal corporations.

Noble *vs.* Mitchell, 164 U. S. 368.
Pembina Consol. Silver Min. & Mill. Co., *vs.* Pa. 125 U. S. 181.

2. **That the Supreme Court has no jurisdiction where Federal question is only placed on the record for purpose of appeal.**

Marsh *vs.* Nichols S. & Co., 140 U. S. 344.
Boughton *vs.* Am. Ex. Nat. Bk., 104 U. S. 427.
Michigan C. R. Co. *vs.* Mich. Sou. R. Co., 19 How. 378.
Fleming *vs.* Clark, 12 Allen 98.
Brown *vs.* Atwell, 92 U. S. 327.

3. **That the Federal Court can only consider Federal questions and not questions of local law.**

Chicago L. Ins. Co. *vs.* Nudlees, 113 U. S. 574.
Cornell Univ. *vs.* Fiske, 136 U. S. 152.
Pollard *vs.* Kibbe, 14 Pet. 353.
Wallace *vs.* Parker, 6 Pet. 680.
Austin *vs.* Boston, 7 Wall. 694.
150 U. S. 361.
132 U. S. 554.
133 U. S. 554.
Desaussure *vs.* Gaillard, 127 U. S. 216.
C. B. & Q. R. Co. *vs.* Ill., 200 U. S. 561, 580.
N. Y. & N. E. R. Co. *vs.* Bristol, 151 U. S. 556.
Eustis *vs.* Bolles, 150 U. S. 370.
Ft. S. R. Co. *vs.* Merriam, 156 U. S. 478.
Hamblin *vs.* Western Land Co. 147 U. S. 531.
Costello *vs.* McConnico, 168 U. S. 674.
Swope *vs.* Leffingwill, 105 U. S. 3.
Myrick *vs.* Thompson, 99 U. S. 291.

Urging That the Federal Court is Without Jurisdiction and That no Federal Question is Involved, the Following is

BRIEF OF ARGUMENT AS TO MERITS

As argued before Supreme Court of Georgia.

A Trade Name is a Trade Mark.

1. "A trade-name should be considered and treated the same as a trade-mark. If the name is arbitrary or fanciful, the adopter and user may acquire an exclusive right therto, and may prohibit others from using it, even though such use is innocent or accidental, and no element of fraud is present . . . Where the trade-name is one that is capable of exclusive appropriation, an injunction will be granted against an innocent or accidental use thereof by others." Much more will an injunction be granted against a deliberate and willful use of such name by others. Such trade-name is a valuable part of the assets of the person whose skill and integrity have won confidence for it. In an action to enjoin its unauthorized use by others, the appellee need not show that any damages have resulted, and the motive of the defendant in assuming the name is immaterial. "The injury necessary to sustain the action is implied in the act of the defendant in wrongfully appropriating the name of the plaintiff." One who appropriates the trade-name of another to his own use without the consent of the owners "is guilty of a fraud on the public, and a fraudulent taking from the proprietor, which is, both in intent and effect, a larceny."

Paul on Trade-marks, Sec. 160, p. 272.
Hoyt *vs.* Hoyt, 143 Pa. 623.
Roy Watch Case Co. *vs.* Camm-Roy Watch Case Co., 28 Misc. Rep. (N. Y.) 45.
Newby *vs.* Oregon Cen. Ry. Co., Fed. Cas. No. 10, 144.

Rights of Voluntary Associations vs. Corporations.

2. An injunction will lie at the instance of a voluntary association to restrain the unauthorized use of its name by another

association, or corporation, and will also lie at the instance of one corporation to restrain another corporation from assuming the same name, or the same name with a slight alteration. The names of voluntary associations and of corporations are of their own choosing, and if the name chosen is an unlawful imitation of the name of a prior association or corporation it is subject to the same rules of law as if it were the name of an unincorporated firm or company.

"By the execution and filing of (articles of incorporation) the corporate name assumed thereby and specified therein becomes exclusively appropriated. If afterwards any person attempts to incorporate for any purpose by the same name, this would be an encroachment upon the rights of the first corporation, and therefore illegal. To prevent the continuance of such a wrong upon the rights of another, equity will interfere, at the suit of the injured party, by injunction. The case is analogous to, if not stronger, than that of a piracy upon an established trade-mark. The corporate name of a corporation is a trade-mark (trade-name) from the necessity of the thing, and, upon every consideration of private justice and public policy, deserves the same consideration and protection from a court of equity."

A corporation may be enjoined from using a trade-name lawfully adopted prior thereto by a partnership. An injunction may be maintained to restrain the use of a corporate name that has been lawfully and exclusively appropriated, and it is no objection to such injunction that there is no element of fraud in appropriating, or that no injury has resulted, or will result, from the use of such name.

The law is thus laid down by Clark on Corporations, page 73:

> "At common law, and independently of any statute, a corporation has an exclusive right to the use of its name, and it will be protected by a court of equity, by injunction, against its use by another corporation. The name of a corporation is a necessary element of its existence, and aside from any statute, the right to its exclusive use will be protected upon the same principles that persons are protected in the use of trade-marks."

Again, as has been declared by good authority:

> "A corporation has the right to the exclusive use of its name—a right which a court of equity will by injunction protect from infringement—on the same principle that it protects trade marks. And in order to constitute an infringement, it is not essential that the names be identical, or that there be a fraudulent intent; it is sufficient if the similarity be calculated to deceive the unwary public, or otherwise injure the company having the prior right; nor can the defendant justify the infringement on the ground that its own name was acquired by grant from the Legislature, or by order of the Court. Neither the Legislature nor the Court can, in an ex parte proceeding, interfere with a vested right."

Equity Specially Protects Name of Charitable Associations.

On account of the importance of the work and the vastness of their charitable undertaking, courts of equity have seen fit to take jurisdiction of the class of cases to which the case at bar belongs, and secure to them the protection and grant the relief prayed by appellees. The use of a name already adopted, owned and used by another corporation or voluntary society, or the use of a name which is a colorable imitation of such name, will be enjoined, and no association of persons will be incorporated under a name, or under any colorable imitation of a name, already adopted and used by a similar voluntary association, or a corporation of similar purpose and plans.

1. Morawitz on Corp. (2d Ed.), Secs. 286, 357.
Peck Bros. & Co. *vs.* Peck Bros. Co., 113 Fed. 291-302.
Newby *vs.* Oregon Cen. Ry. Co. Supra.
Hoyt *vs.* Hoyt supra.
Holmes *vs.* Holmes, 37 Conn. 278.
s. c. 9 Am. Rep. 324.
Mesne *vs.* Sundet, 101 N. W. Rep. 490.
Richard *vs.* Caton College, 92 N. W. Rep. 958.
Edison Storage Battery Co. *vs.* Edison Automobile Co., 56 Atl. 861.

Armington *vs.* Palmer, 42 Atl. 308.
s. c. 43 L. R. A. 95.
Celluloid Mfg. Co. *vs.* Cellonite Mfg. Co. 32 Fed. 97.
High on Inj. (3d Ed.), Sec. 1081.
William Rogers Mfg. Co. *vs.* Simpson, 54 Conn. 568.
Paul on Trade Marks, Secs. 167-168.
Sebastian on Trade Marks, p. 226, et seq.
Gray *vs.* Taper-Sleeve Pulley Works, 16 Fed. 436.
Merchants Detective Assn *vs.* Detective Mercantile Agency, 28 Ill. App. 250.
Beach on Private Corporations, Sec. 373.
26 A. & E. E. L. 268.

Absence of Fraudulent Intent No Defense.

A corporation may be enjoined from using the name of another. Such suit is not in effect a suit to annul the corporation. The absence of fraudulent intent is no defense to a corporation in a suit for wrongfully assuming and using a name belonging to another.

Chas. S. Higgins Co. *vs.* Higgins Soap Co., 27 L. R. A. 44.
Armington *vs.* Palmer (R. I.), 43 L. R. A. 95, and cases there cited.
Lane *vs.* Bros. & Sisters, etc., Society, 120 Ga. 355.
Ex parte Walker, 1 Tenn. Ch. 97.
Clarke on Private Corporations, p. 157.
And cases supra.

Right of Relief Not Confined to Trade Names Used For Gain.

3. The right to such relief is not confined to trade-names used in business for gain. "Upon every consideration of private justice and public policy," such right exists in and may be enforced at the instance of voluntary associations and corporations organized and conducted for purposes fraternal, charitable and patriotic, or for amusement. "It is not with business pursuits in the ordinary sense exclusively that the name claimed must have been connected." The conductor of an enterprise

for the innocent amusement of the public will be protected by injunction in the use of his trade-name.

Lane *vs.* Bros. & Sisters, etc., supra.
International Committee of Young Women Christian Assn *vs.* Young Women's Christian Assn., 56 L. R. A. 888.
Rudolph *vs* Southern Ben. League, 7 N. Y. Supp. 135.
Christy *vs.* Murphy, 12 How. Pr. 77.
Black Rabbit Assn. *vs.* Monday, 21 Abbott's N. C. 99.
Society of War of 1812 *vs.* Society of War of 1812, 46 App. Div. (N. Y.) 568.
4 Cyc. 304, and notes.
Note, 33 Am. Rep. 338.
The State *vs.* Georgia Medical Society, 38 Ga. 626.

What Are Trade Marks or Trade Names?

4. As a general rule, neither generic or descriptive words, nor geographical terms can be appropriated as trade-marks or trade-names. But from long use as the designation of a particular article or business, or other circumstances standing upon the same footing of reason and justice, such words or terms may acquire a secondary meaning so closely allied to the article or business with which they are associated, as to be protected as trade-marks or trade-names from unfair competition by others using such words or phrases in forming similar names. A geographical name will also be protected as a trade-name when used solely as a fancy description of the business.

A new combination of words may compose a trade-mark or trade-name, and "it will be unlawful for any other person to filch the combination, or any important part thereof," either by taking an extract from or by adding a prefix or suffix to the combination.

The names of newspapers and periodicals will be protected as trade-marks, though usually containing geographical names. In this class of trade-marks, the distinctive words can not be exclusively appropriated, and hence the element of fraud or unfair competition enters in the determination of the question of granting relief against the infringer.

City of Carlsbad *vs.* Thackery, 57 Fed. 18.
City of Carlsbad *vs.* Kutnow, 68 Fed. 794, affirmed in 18 C. C. A. 24, 71 Fed. 167.
Sanders *vs.* Ult, 16 Mo. App. 322.
Amoskeag Mfg. Co. *vs.* Garner, 54 How. Pr. (N. Y.) 297.
Dunbar *vs.* Glenn, 42 Wis. 118, 137.
Lea *vs.* Wolf, 15 Abb. Pr. (N. S.; N. Y.) 1, 5.
El Modello Cigar Mfg. Co. *vs.* Gato, 25 Fla. 886.
Parkland Hills Blue Lick Water Co. *vs.* Hawkins, 95 Ky. 502.
Joseph Dixon Crucible Co. *vs.* Guggenheim, 2 Brewst. (Pa.) 321.
American Grocer Pub. Assn. *vs.* Grocer Pub. Co., 25 Hun. (N. Y.) 398.
Clement *vs.* Maddick, 5 Jur. (N. S.) 592.
Hall Safe & Lock Co. *vs.* Herring-Hall-Marvine Safe Co., 143 Fed. 231.
Brown Chemical Co. *vs.* Meyer, 139 U. S. 540.
Wolfe *vs.* Barnett, 24 La. Ann. 97.
Bissell Chilled Plough Works *vs.* Bissell Plough Co., 121 Fed. 357.
Hutchinson *vs.* Blumberg, 51 Fed. 829.
Chickering *vs.* Chickering & Sons, 120 Fed. 70.
Rogers *vs.* International Silver Co., 118 Fed. 133.
Swift & Co., *vs.* Groff, 114 Fed. 605.
28 Am. & E. E. L. 400, *et seqr.*
Paul on Trade Marks, Secs. 40, 58 and 59, quoting several English cases decided by the House of Lords.

5. Though a word in a trade-name may be incapable of exclusive appropriation, the use of such word in any color, style or form of letters, or in combination with other words, so as to imitate its appearance or combination as used by one who had previously adopted and used it as a trade-name, will be enjoined, as will also a misapplication of the word.

Genesee Salt Co. *vs.* Burnap, 73 Fed. 818, 20 C. C. A. 27.
43 U. S. App. 243, 67 Fed. 543.

Van Horn *vs.* Coogan, 52 N. J. Eq. 380, 28 Atl. 788.
Enoch Morgan's Sons *vs.* Schwachhofer, 55 How. Pr. 37.
DeLong *vs.* DeLong Hook & Eye Co., 89 Hun. 399.
35 N. Y. Supp. 509.
Carroll *vs.* Ertheiler, 14 Phila. 424.
Clark Thread Co. *vs.* Armitage, 67 Fed. 896.
Van Auken Co. *vs* Van Auken Steam Specialty Co., 57 Ill. App. 240.
Foster, Milburn & Co. *vs.* The Blood Balm Co., 77 Ga. 216.
Whitley Grocery Co. *vs.* McCaw Mfg. Co., 105 Ga. 839.

Colorable Imitations Presume Fraud.

6. When a trade-name composed of words or phrases incapable of exclusive appropriation is selected for use because of its similarity to one already appropriated and used, fraud in its selection is evident, and will be presumed. Where the resemblance between the names is strong, and no sufficient reason for the resemblance appears, the inference is that the name was chosen by the infringer for the purpose of misleading. Resemblance is a circumstance of primary importance, because, if there is no reason for the resemblance, it will be inferred that the resemblance was adopted for the purpose of misleading. Exact similitude is not required to constitute an infringement. Only things which are put prominently forward so as to be likely to catch the eye or ear and impress the mind need be considered. Similarity in the main distinguishing feature is sufficient to constitute infringement, even where the principle of confusion or unfair competition is involved.

Paris Medicine Co. *vs.* Hill & Co., 102 Fed. 148.
McLean *vs.* Fleming, 96 U. S. 245.
Peck Bros. Co. *vs.* Peck Bros. Co., 113 Fed. 291.
Koebel *vs.* Chicago, 210 Ill. 176; 71. N. E. 362.
Griggs, Cooper & Co. *vs.* Erie Preserving Co. 131 Fed. 359.
Note, 38 Am. Rep. 81.
Kerley on Trade Marks, 491.

Apparent Conflict in Authorities May Be Remedied.

7. The apparent conflict in the authorities may be reconciled, if the difference be borne in mind between trade-names composed chiefly of an arbitrary or fanciful word or phrase, which gets its meaning from the business or product with which it is associated, itself being capable of exclusive appropriation, and trade-names composed of words or phrases which are not capable of exclusive appropriation, and which attain a secondary meaning superior to their original significance by virtue of their long and close association with a given business or product. Trade-names of the former class are technical and absolute, of the latter qualified and dependent upon attendant circumstances. In the former fraud and injury will be conclusively presumed and relief granted as a matter of course. In the latter it must appear that the use of the name is unauthorized and damaging. In the former the intention to mislead and deceive is presumed. In the latter such intention must be averred and proved. In the former intention of the infringer is immaterial, because his act is a violation of a property right, and the essence of the wrong lies in the injury to such right. His ignorance or innocence does not excuse. In the latter the intention of the infringer and the probable result of his conduct are material. In the former no fraudulent intent is necessary, and injunction will be granted even though the infringer was ignorant that his device or trade-name was the property of another. In the latter the circumstances must show that there was an intention to infringe. In the former fraud, injury and damage are conclusively presumed. In the latter intention to injure and probable damage must be averred, and when proved they carry proof of fraud.

Coffen *vs.* Bruton, 4 McLean, 516.

Nesne *vs.* Sundet, supra.

Eureka Fire Hose Co. *vs.* Eureka Rubber Co., 60 Atl. 187-561.

Cases cited supra.

Paul on Trade Marks, Sec. 196, cases therein quoted and cited.

What Are Trade Names?

8. Arbitrary, fictitious or fanciful names, words or phrases, names of famous persons long since dead, or of famous things, or characters of fiction or fancy, may be exclusively appropriated as the chief element of a trade-name. When so appropriated and used, the name or thing, whether expressed by word or phrase, is the exclusive property of the person first appropriating and using it in relation to his business or product. Such name or phrase is presumed rather to take its meaning from its association with such business or product than to have its original meaning, and to lose its original identity and get for itself a new identity by its association with such business or product, or rather it and the business or product in connection with which it is used become fused in identity and meaning. The right of the originator and user of such arbitrary, fictitious or fanciful word or phrase becomes absolute, and the appropriation of such word or phrase by another will be conclusively presumed to have been made with the intention to mislead for the purpose of gaining an unrighteous advantage of the result of the work of the original user, and damage to the owner of such trade-name need not be averred or proved, but will be inferred, and further unauthorized use of such name restrained.

U. S. Rev. Statutes, Sec. 4939.
Brietenbach Co. *vs.* Spangenberg, 131 Fed. 160.
Saxlehner *vs.* Eisner & Mendelson Co., 179 U. S. 19.
Lichtenstein *vs.* Goldsmith, 37 Fed. 359.
26 Am. & Eng. Enc. of Law (1st Ed.), 248.
Paul on Trade Marks, Sec. 51, 162, and cases therein cited.

Fraternal Orders May be Competitors.

9. Fraternal orders are as truly competitors as traders, the distinction being that the one seeks the confidence of the public for the general good, and the other seeks the confidence of the public for individual profit. The basic principle for success in both is to command respect and confidence by fair and honest

dealing. The citizen allies himself with the fraternal order because of his confidence begotten by its character for good works, so that he may get good and help do good. The citizen buys from the reputable trader because of his confidence in the trader and the trader's wares, expecting benefit from his trade. The fraternal order is responsible for the personnel of its membership and the character of its work, just as the trader is responsible for the honesty of his dealings and reliability and usefulness of his goods and products. The fraternal order is just as much entitled to protection from spurious imitation as the business trader. The one deals in matters intended to improve the mind and heart and make for civic righteousness, the other deals in material things intended to make for the comfort of the body. The business man loses his custom by the slanderous effect of the dishonest dealer. The fraternal order loses its prestige and usefulness by the odious association of an unworthy membership. Each is equally entitled to protection from such imposition.

It is said by defendants that no confusion or unfair competition can occur by their conduct, because the membership of plaintiffs' order is confined to Caucasian males, while the membership of defendants' order is sought from colored races. Such defense is spurious. The fraternal order which makes for itself a name among men is entitled to determine what class of persons shall be entrusted with the benefits and charged with the duty of the preservation of such name. The usurpation of such name by persons unauthorized and irresponsible to the makers of the name is abhorrent to the principles of righteousness and condemned in the forum of conscience and of law.

On the principles of fraud and unfair competition, the appellants' usurpation of the name of appellees' order is condemned. The record shows that they adopted and are using such name and its associated emblems in fraud for the purpose of misleading. They do not deceive members of appellees' order, but they do deceive the general public, to the hurt of appellees' and that part of the public from whom they seek membership. A few of the elect of the appellants' order may know that it is not of or a part of appellees' order, but the rank and file of appellants' order, as well as the uninitiated of their kind,

are deceived or likely to be deceived by the conduct of appellants' order into believing that it is part and parcel of appellees' order. Indeed, the manifest intention of appellants' order, as shown by the record, is to create the impression upon its membership and upon the class of citizens from which it obtains members and upon the general public that its order is of the same birth, entitled to the same recognition, and clothed with the same responsibilities and powers as appellees' order. In appropriating the appellants' name, the purpose of appellants' order was to profit by the value of that name, by misleading the public and deceiving those it invited to its membership, by the false representation that it was of or authorized by appellees' order. It thus commits a fraud upon appellees' order and upon the public upon whose good will and respect the appellees must depend for recruits to its membership for the accomplishment of its beneficent purposes.

The fraudulent intent and purposes of appellants' order is apparent from its full piracy of the name of appellees' order and its laws and emblems, and its representations that it is the same as appellees' order; the fact that it intends to mislead and does mislead is established; and it should be enjoined, even on the principle of unfair competition. What is obnoxious to a patriotic and fraternal order is as substantive and complete a wrong as what is pecuniarily detrimental to the business of a citizen, and should as readily be prohibited.

"Pythias" Is Fanciful.

10. The name "Pythias" is fanciful, and its selection as the name of appellees' order was arbitrary. The name is mythological or legendary rather than historical; certainly the name of a person long since dead, if indeed such a person ever lived. The arbitrary adoption of the name of the legendary hero of Syracuse, and its subsequent continuous use, was an absolute appropriation of the word, and gives the appellees' order the exclusive right to its use as a cardinal part of the name of a fraternal order in Georgia or the United States. The name being a technical trade-name and exclusively appropriated and the infringement of the name by the appellants' order being clear, the intention of the infringer is immaterial, and both

fraud and damage will be so conclusively presumed as to require the restraint of the further use of the name by the infringer.

"If the plaintiff has an absolute right to the use of a particular word or words as a trade-mark, then, if an infringement is shown, the wrongful or fraudulent intent is presumed, and although allowed to be rebutted in exemption of damages, the further violation of the right of property will nevertheless be restrained."

Elgin National Watch Co. *vs.* Ill. Watch Co., 179 U. S. 665.

Paul on Trade Marks, Sec. 196, and American and English cases there cited.

Citations supra.

The right of the appellees' order to the word "Pythias" in a trade-name in the field of fraternal orders and benefit societies being exclusive and absolute, the use of the word by appellants' order can not be justified on the ground that the membership of the two orders is confined to different races. Should a person or corporation establish, in a life insurance business, the name "Anti-Styx Life Insurance Company" as a trade-name, and confine its contracts of insurance to white males between the ages of twenty-one and thirty-five, another person or corporation could not adopt said name in the field of life insurance and avoid the penalty of its infringement by confining its contracts of insurance to white males between the ages of thirty-five and fifty. If the owner of such trade-name should confine its business to insuring men, an infringement of said name could not be justified by the infringer confining its business to insuring women. If the owner of such trade-name should confine its business to members of the Caucasian race, an infringer of the name could not escape the legal inhibition against his infringement by confining his business to the colored race.

The appellants' order can not escape the law by invoking the color of its membership. The order which has made the name the synonym of honor and good works, and which must bear the odium of any dishonor that may be brought to its name

by its unworthy or unwise use, has, and of right ought to have, the exclusive right to its name.

International Committee Young Women's Christian Association *vs.* Young Women's Christian Association (Ill.) 56 L. R. A. 888.

Great Hive of the Ladies of Maccabees of Michigan *vs.* Supreme Hive of the Ladies of Maccabees of the World, 88 N. W. 882.

s. c. 97 N. W. 779, s. c. 99 N. W. 26.

Citations supra.

11. *"It is not necessary to constitute an infringement that every word of a trade-mark should be appropriated."* "The use of one only of the words which constitute a trade-mark may be sufficient to constitute an infringement," and such use of the one word which is the distinctive and cardinal part of the trade-name is always sufficient to constitute an infringement.

The appellants' order has appropriated every word of appellees' name, and its infringement is none the less clear and certain because of its suffixing the names of the continents. That suffix contains geographical words only, words which can not be exclusively appropriated, and their addition is not a material part of appellants' name, and does not make the name materially different from appellees' name, but leaves it not merely a colorable imitation, but an exact copy of appellees' name. The adding of words as a suffix, the same not being distinguishing words, leaves the name intact and the infringement complete. The lengthy and meaningless suffix is not generally or publicly used as a part of appellants' name, and its use is purposely and fraudulently omitted. The distinctive word "Pythias" and the allocation of the words of appellees' entire name are preserved and used. Even the true name of a corporation can not be by it abbreviated in order to make it resemble the name of another corporation.

The additon of the word "Artificial" by suffix to the trade-name "Carlsbad Sprudel" does not prevent infringement. "Carlsbad" being the distinguishing word, the trade-name "Carlsbad Sprudel Salz" is infringed by the name "Improved Effervescent Carlsbad Powder." The name "National Folding

Box & Paper Company" is infringed by the name "National Folding Box Company, Limited." "The imitation need only be slight, if it attaches to what is most salient."

Johnson *vs.* Bauer, 27 C. C. A. 374, 82 Fed. 662.
McCann *vs.* Anthony, 21 Mo. App. 83.
Saxlehner *vs.* Eisner & Mendelson Co., 179 U. S. 19, 31.
Paul on Trade-Marks, Secs. 59, 168, 170, 188.
Other citations supra.

Fraud in Appellant's Use of Name.

12. Appellants practically admit that they have completely pirated appellees' correct name, and all of the insignia publicly used and worn by members of appellees' fraternity to indicate to each other and to the general public that they are members of appellees' incorporated fraternal society, but contend that the appellants and their associates are not engaged in such infringement of appellees' corporate trade-name and rights as the Court will enjoin, because: (1) There is no fraudulent intent in the infringement. (2) There are no property rights of appellees' involved in the infringement. (3) No confusion of identity or business inconvenience has resulted or will result from the infringement, and no rights of appellees interfered with. (4) That the color of the majority of the members of appellants' society gives and secures to the appellants and their associates immunity from the laws of the land, and especially from the pains and penalties of the piracy and infringement of trade names of corporations and voluntary societies.

As shown supra, proof of fraudulent intent on the part of the infringer is not necessary. But the record in this case abundantly shows that the appellants selected and are using appellees' name for a fraudulent purpose; to fraudulently mislead the general public, and to fraudulently deceive those classes and races from which it seeks membership; and to fraudulently avail themselves of the advantage flowing from the prestige of the good name that appellees have established. These negroes have taken our name, the titles of our officers, our badges and uniforms, and all other signs and insignia used

to indicate membership in our order, and by their acts and conduct hold themselves out to the general public and to those of the public from whom they expect to get members as being the same as or of appellees' organization and corporation, and entitled to its name, insignia and usages, with all the rights, privileges and immunities connected with and flowing therefrom.

The jury found that the infringement is with fraudulent purpose and design; that the infringement is actual and with fraudulent intent.

In Paris Medicine Co. *vs.* Hill, 102 Fed. Rep. 148, the Court says:

> "When the resemblance between names is strong, and no sufficient reason for the resemblance appears, the inference is the name was chosen by the infringer for the purpose of misleading."

In the case of the Legal Aid Society *vs.* Coöperative Legal Aid Society, 83 N. Y. Sup. 986, the Court said:

> "A corporation assuming the name of an older corporation will be enjoined from using it, although there is no fraudulent intent. The natural and necessary result of such use being to injure the older corporation by confusing its identity."

This Cause Involves Property Rights.

There are abundant and large property rights of appellees involved in this case, which are affected injuriously by the appellants' infringement. The appellees' own many hundred thousand dollars worth of real and personal property, which is held and used to carry on the purposes and objects of appellees' organization, and to maintain its corporate rights and to perform its corporate obligations. The appellees annually disburse thousands of dollars in benevolences prompted by charity, and hundreds of thousands of dollars annually pursuant to its corporate and fraternal obligations to its members who live, and to the beneficiaries of its members who die. These necessities and obligations require and entitle appellees to cer-

tainty of identity and exclusiveness in the use of their corporate name.

But the property right in the name alone is sufficient. Each of its members has a property right in its name. The value to its members of the confidential relations established by the secrecy of the work of the brotherhood, and of the advantages of social intercourse, introduction and friendly aid, is a principle of vital importance and high privilege, often more valuable than mere real or personal property. The very name itself is valuable, or the appellants' order would not seek to appropriate it. The name of a fraternal order is entitled to as much protection as the name of a business concern.

> International Commitee Young Women's Christian Association *vs.* Young Woman's Christian Association, supra.
> Great Hive Ladies of the Maccabees *vs.* Supreme Hive Ladies of the Maccabees, supra.
> And cases under sub-head No. 3, supra.

It is like the good will of a business—the right of a charitable organization to its name. The good will of a business will be protected, and the good name of the Knights of Pythias should be protected.

"The good will of a co-partnership or a corporation is an asset, or property, and will be protected in equity."

> Williams *vs.* Wilson, 4 Sanford Chy. 379L.
> Wedderburn *vs.* Wedderburn, 22 Beaver 84.
> Remick *vs.* Emig., 42 Ill. 342.

The good name of a charitable or fraternal organization is its good will in business, whereby it draws members to it, from whom it gets money and coöperation with which to carry on its charitable enterprises, and also from the general public, to support it in its undertakings for charity. What is the difference in principle, whether you get the money directly from the public by begging for donations, or you get your members from the public and get the money from them?

Even if there were no property rights involved, equity would enjoin interference with the membership rights of the Grand

Lodge, the membership rights of local lodges, and the membership rights of each one of the members of appellees.

For the rights of an incorporated company to carry on the function for which it was organized, and the rights of a member to exercise his right of membership in the corporation are incorporeal hereditaments which equity will protect.

Dartmouth College case, 4 Wheat. 657, 699.
Heaton *vs.* Hull, 21 N. Y. App. 126.
State *vs.* Georgia Medical Society, 38 Ga. 626.
Blackstone, Vol. 2, p. 21.

In the Armitage case, 83 L. R. A. 95, a corporation had ceased to do business, yet the court of equity restrained anybody else from using its name, because it might go into business again and its name was its good will. This decision shows how jealous a court of equity is in protecting the name of a corporation from infringement.

"Although no property rights are involved, equity will enjoin the unauthorized withdrawal of the charter of a college fraternity."

Heaton *vs.* Hull, 51 N. Y. App. Div. 126.

A trade-name is property. The law recognizes and the courts will protect the property right in a name. A corporation has the right to the exclusive use of its name.

Vol. I. Minor's Institutes, (Lyle's notes).

Ex parte Walker was a case where certain individuals sought to become incorporated under the name of "The Ladies' Good Samaritan Society of Nashville," for the purpose of aiding each other in time of sickness and distress, with money and personal attention. The application in this case was opposed by a corporation already chartered under the name of the "Nashville Ladies' Good Samaritan Society." The learned Chancellor Cooper held that, if this corporation was already organized, the Court, in its judicial capacity, at the instance of any party aggrieved, upon a bill filed for the purpose, would enjoin the new corporation from using the name which it had selected,

upon the ground that the plaintiff had acquired a prior right to it. We quote from this decision:

"Beyond all doubt, men and corporations may have rights in a name, just as well as they may have in a trade-mark, which no other person will be permitted causelessly to infringe. Property in a name is a well recognized right of the civil law, and suits are common in France and Scotland to enforce such rights, and to prohibit their infringement. Such suits have not been common under the English system of laws, but suits to prevent the fraudulent use of names are not unknown to courts of chancery. It is very true that it has been doubted by very high English authorities whether property can be acquired merely in a name, but the court of chancery has never hesitated to prevent, by injunction, the use of names, marks or letters, by which an attempt is made to interfere with the business, or to use them to the detriment of a prior possessor, even if the names, marks or letters are not in every respect identical. 2 Story Eq. Jur. 951, et seq. In Bell *vs.* Locke, 8 Paige 75, an injunction was granted restraining the defendant from assuming the name of a newspaper published by plaintiff, for the purpose of deceiving the public and supplanting the plaintiff. And the same principle was applied to the keeper of a hotel, who adopted, as the name of his house the name of another hotel of higher reputation. Howard *vs.* Henriques, 3 Sandf. S. C., 725.

"If, then, these petitioners were organized under the name of their selection, without opposition, and the opposing corporation were to file a bill in this Court to enjoin the petitioners from using the name chosen by them, on the ground that it was intended to deceive the public and to supplant the plaintiff, the jurisdiction of the Court would be beyond all question."

In the Dartmouth College case the Court said:

"A corporation is defined by Mr. Justice Blackstone to be a franchise. It is, he says, a franchise for a num-

ber of persons to incorporate and exist as a body politic with a power to maintain perpetual succession and to do corporate acts, and each individual of such corporation is also said to have a franchise or freedom. This franchise, like other franchises, is an incorporeal hereditament issuing out of something real, or personal, or concerning or next to an exercisable right within a thing incorporated. To this grant and this franchise the parties are the King (the State) and the persons for whose benefit it is created, or trustees for them. The subjects of the grants are not only privileges and immunities, but property, or which is the same thing, a capacity to acquire and hold property in. In perpetuity, certain obligations are created, binding both on the grantor and the grantees. On the part of the former it amounts to an extinguishment of the King's prerogative to bestow the same identical franchise on another corporate body, because it would prejudice his prior grant. It implies therefore a contract not to reassert the right to grant the franchise to another or to impair it. There is also an implied contract that the founder of a private charity, or his heirs, or other persons appointed by him for that purpose, shall have the right to visit and to govern the corporation of which he is the acknowledged founder, and also that in case of its dissolution the reversionary right of the founder to the property with which he had endowed it, should be preserved inviolate.

"The truth, however, is that all incorporeal hereditaments, whether they be immunities, dignities or franchises, are rights which are deemed valuable in law. The owners have a legal asset and property in them, and legal remedies to support and recover them in case of any injury or obstruction or disseizing of them."

This case well states the policy of the law to recognize and protect the rights of a charitable institution. The Dartmouth College was a charitable institution.

An injunction issued in the case of the English Presbyterian Congregation of Harrisburg, 2d Grant Cases, p. 240 Pa. This was not a corporation organized for profit. Also, in the Legal Aid Society *vs.* Coöperative Legal Aid Society, 83 N. Y. Supp. 926.

"A corporation assuming the name of an older corporation, will be enjoined from using it, though there is no fraudulent intent, the natural and necessary result of such use being to injure the older corporation by confusing its identity."

The Court says:

> "The first question for consideration, therefore, is whether a fraudulent intent is the essential basis of relief. In ordinary cases of trade-mark, and in cases involving an individual's use of his own name, it is no doubt the controlling factor, but it is not always essential. There are two classes of cases involving judicial interference with the use of names; first, where the intent is to get an unfair and fraudulent share of another's business; and, second, where the effect of defendant's action, irrespective of his intent, is to produce confusion in the public mind, and consequent loss to the complainant. In both cases the courts of equity administer relief without regard to the existence of a technical trade-mark."

This opinion, quoting from the case of Holmes, Booth & Atwood Mfg. Co., says:

> "The law, having authorized the selection of a name and having declared the name so selected to be the name of the corporation, we see no reason why the law should not protect the corporation in the use of that name, on the same principle and to the same extent that individuals are protected in the use of trade-marks. Hence, it necessarily follows that the corporations, in the exercise of discretionary powers conferred by the statute, must so exercise them as not to infringe upon the established legal rights of others. The existence of the consequences does not necessarily

depend upon the question whether fraud or evil intent does or does not exist. The *quo animo*, therefore, would seem to be an immaterial inquiry."

On the question of the amount of injury necessary for equity to interfere, this cause shows the following language:

"Secondly, it the injury de minimis? The learned judge below found the circumstances were 'sure to give rise to the trouble,' and we have the evidence that correspondence was impeded in the postoffice and telephone lines, and confusion and delay resulting in that and other ways. In these days of telephones, telegraph and fast transportation, when it may be said more significantly than ever before, that time is money, such confusion and delay are manifestly a serious business injury. But even without this, the authorities have settled that the exclusive rights of a corporation to its name is one that of itself carries presumption of injury, by interference, and will therefore be protected."

Again, on the same question:

"The name being an essential in plaintiff's corporate existence, its further wrongful use by defendant will have the tendency to injuriously affect plaintiff's identity and business. For this the law has no adequate remedy, and resort was taken to the equitable remedy in injunction, citing Newby *vs.* Railway Co., 1 Deady 609 Fed. Cas. No. 10, 144, where it was said: 'Under the law, the corporate name is a necessary element of the corporation's existence. Without it a corporation can not exist. Any act which produces confusion or uncertainty concerning this name is well calculated to injuriously affect the identity and business of a corporation. And, as a matter of fact, in some degree, at least, the natural and necessary consequences of the wrongful appropriation of a corporate name is to injure the business and rights of the corporation, by destroying or confusing its identity. The motives of the persons attempting the wrongful

appropriation are not material. Decree reversed, bill reinstated and injunction directed to be issued in accordance with this opinion."

The War of 1812 case was a case where one society was engaged in the business of commemorating and preserving the history of the events and actors of the War of 1812, and another corporation was organized for the purpose of doing the same thing. There were no property rights involved, and no fraud. The syllabus of the case uses this language:

> "The right to injunctive relief against the improper use of a corporate name, which interferes with the plaintiff's business, is not limited to cases where the business is of a commercial or trading character."

In the body of the opinion, this language is used:

> "The right to injunctive relief depends upon the use by one party of the name and corporate designation of another, so as to interfere with its business, whatever it may be, not merely a commercial or trading business. This results from the fact that many corporations are created under the laws of this State, which have nothing to do with trade or business. (Such is true in Georgia.) As they are authorized by and are creatures of the law, it would be a strange condition if the law could not protect them in that which it has encouraged them to do. It is the policy of the State of New York, embodied in its statutes, to allow the incorporation of such societies as the plaintiff and the defendant." (Such is the policy in Georgia.)

Again, this opinion says:

> "We do not admit or give any weight to the conclusion that the gentlemen connected with the organization of the defendant have been guilty of actual or attempted fraud; that question does not arise. It is sufficient that the plaintiff has a prior right; that the defendants have assumed a style and title which is substantially that of the plaintiff; that the plaintiff's bus-

iness, or the purpose for which it was organized, will be injuriously affected by the defendant continuing to use the title by which it was incorporated."

Comparatively speaking, the name of an individual is a small matter. He touches the public at only a few points, and lives but a short time. The Court of Equity merely said as to the usurpation of an individual's name.

> "These are not matters that we care to go into—they do not seem important enough to us. Therefore, unless you can show some property injury, the courts won't interfere."

But in the case of corporations it is different. The name of a corporation is a constituent part of the charter of the corporation; it is a part of its franchise; it is what it sues and is sued by, and the means by which it has perpetual succession.

> "The names of corporations are given of necessity, for the name is, as it were, the very being of the constitution; for while it is the will of the King (State) that erects them, yet the name is the knot of their combination, without which they can not perform their corporate acts; for it is nobody to plead and be impleaded, to take and give, until it hath got a name. The identity of the name is the principal means for effecting that perpetuity of succession, with members frequently changing, which is an important purpose of incorporation."

Clark on Corporations, p. 72, and notes.

A corporation touches the public at many more points than does an individual. It is much larger and usually exercises more varied rights and more varied duties than does an individual, and it lasts in perpetuity.

An individual can not say to the general public, "Join me; I am a fine beneficial or fraternal association;" or, "take stock in me, and I will give you handsome returns." He is only an individual, and consequently the courts have not been inclined to interfere in the matter of his name.

But it is important to the general public and to the members of a corporation, and to the administration of the law, and to the succession of property, to have these corporations and charitable and fraternal societies properly identified, without confusion.

The appellants in error (called defendants throughout this brief) recognize that appellees' corporate and society name is a valuable property right by the stubborn and expensive effort they are making to appropriate that name. They contend that the name is and will be very valuable to them, and the record shows that appellees originally selected the name and have made it valuable. In the brief of appellants in error, their attorneys admit that the name in controversy is a valuable property right. They say (p. 35): "The name is a part of these (franchise) powers and is conferred by an Act of Congress." Again (p. 36), a name acquired by a corporation is conclusive of the right to bear such name as a franchise conferred by law, and (p. 37) a corporation, has the right to the use of its name as a part of its franchise. "The reason of the protection of the name of the corporation is that it is in the nature of property and is a sort of franchise." (p. 39). And on pp. 44 and 45 of their brief, opposing attorneys concede appellees' contentions that there is property in corporate names, and that "corporate names are protected to the same extent as trade-marks," and that the Court of Equity will enjoin the infringement of corporate names. The appellants seek to avoid instead of attain "equality under the law," and contend that the race and color of themselves and most of their associates gives them immunity from the law which forbids infringement of a trade-name. We submit that their color, although variagated and ranging from coal black through all shades of mulatto to white, does not change the principles of equity. Besides, their laws do not confine their membership to negroes and mulattoes, but expressly make Caucasian males eligible to membership. The record in this case shows that the appellants and their associates have not merely fraudulently infringed appellees' name, but have made that infringement more hurtful and more palpably fraudulent by making the members of their society believe, and representing to those whom they seek as members,

and by trying to make the general public believe that they are not only using the name with appellees' consent and approval, but also that they are one with, and form a part of appellees' fraternity. In order to be successful and great, a secret fraternal society must be national, not sectional or local, and it is the policy of the United States and of Georgia that such a society shall be protected in the use of its name, and in all of its other rights throughout the length and breadth of the Union, and that no local conditions shall justify or excuse an infringement of its name.

One of the chief values of membership and many of the benefits derived from being a member of appellees' order of Knights of Pythias is the high reputation of the order, and that it is national in its scope and character, and the admiration and respect in which the order is held throughout the country, and the consequent social and other advantages which flow from membership therein. The high repute of the order is based on the care with which the society selects its members. To permit an unselected membership to use the name and wear the badges of the Knights of Pythias will bring contempt and ridicule upon the order, and mortification to its members, and will not only cause the order to decline in popularity and prevent increase in its membership, but will also cause its membership to decrease by causing citizens to withdraw from the order on account of the ignominy, contempt, ridicule and mortification occasioned by a spurious membership parading before the public in the name and insignia of the order. Such mortification would result from membership attained in appellees' order by unworthy white men. It must follow that the fraterity is entitled to the selection of its membership. Many more are the reasons why the appellees should be protected from persons who seek, by all appearances, to create the impression that they are affiliated with appellees' order.

13. It is no reply to appellees' position that church denominations do not object to the use of names similar to their own by negroes. Nor is the failure of white Masons to prevent the use of their name by negroes any reason why appellees should not be granted the relief sought. It is said that although white Masons resent very much the use of the name of their

order by negroes, they can not prevent the same because the Grand Lodge of Masons of England has given the negro Masons as much right as the white Masons have.

Chancellors have granted to the Benevolent and Protective Order of Elks of the United States of America the relief which the plaintiffs are seeking in this case. We cite those decrees to sustain our position. In one case injunction was granted by the Superior Court of Bibb County, Georgia, and writ of error was dismissed in Ga. Court for want of prosecution. Another case was decided and the injunction granted by the Chancellor at Poughkeepsie, New York, and is now on appeal in that State. The third case brought by white Elks against negro Elks in Memphis, Tenn., is now pending in the Court of Civil Appeals in Tennessee. We submit the following extracts from the opinion of Hon. F. H. Heiskell, Chancellor, in the case last referred to. He says:

> "Counsel cite and rely upon the leading case of DuBoulay *vs.* DeBoulay, 2 L. R. (Privy Council Appeals), pp. 430-431, where the Court said:
>
> 'The right to the exclusive use of a name in connection with a trade or business is familiar to our law, and any person using that name after a relative right of this kind has been acquired by another, is considered to be guilty of a fraud, or at least of an invasion of another's rights, and renders himself liable to an action, or he may be restrained from the use of the name by an injunction.
>
> 'But the mere assumption of a name which is the patronymic of a family, by a stranger, whatever cause of annoyance it may be to the family, is a grievance, for which our law affords no remedy.'
>
> "That case was decided in England about the year 1860. The point in the case was that there was no law in England, or in the Island of St. Lucia, governing the use of surnames. The case came before the Privy Council by appeal from the Court of St. Lucia,

one of the West India Islands, which had passed from the control of France and under the government of England.

"The contention of the DuBoulay family was that the law of France had been imported into and became the law of St. Lucia, and therefore a name could be changed only by a legal proceeding. The Court held that this was not so at the time St. Lucia became subject to the law of England, and therefore the law of the island was not different from the law of England, and that, by that law, no formality was required in order to change a name, but that any one could adopt and use any one else's name, provided it did not interfere with the trade use of the name.

"That was a case where the name was adopted by the illigitimate son of a woman who had been a slave of the DuBoulay family. It seems that the name had been used by his mother for quite a while, but the point in the case was that there was no law that required any formality in changing a name, and that any one could adopt a name, and its use would not be enjoined.

"A reference to the Code of Tennessee, Sees. 5402 to 5404, shows that the law of Tennessee is just as it was contended the French law in the Island of St. Lucia was, viz., that a name can be changed only by the formality of a court proceeding, giving sufficient reasons. (Quotes Statutes of Tennessee.)

"The DuBoulay case, therefore, could not have been so decided in the State of Tennessee. In this State a petition could be resisted and successfully resisted if the petitioner showed no good reason for changing the name. If a name was chosen without authority, it could be enjoined, following the reasoning of that case, and this would seem to be a reasonable rule.

"Why should one man be allowed, as mere whim or caprice—and, by the way, that is one of the points that was set out in the DuBoulay case, that the change

was not adopted out of whim or caprice, and, considering the facts of the case, there was a reason for the adoption of the name. Why should a person be allowed, out of mere whim or caprice, to adopt the name of another individual, thereby bringing about confusion and, perhaps, mortification? I take it that if the question was made when an application was made to change the name that it would not be allowed, and that the Court, of its own motion, perhaps, if it knew or recognized that the name of another well-known individual was sought to be adopted, would deny the application.

"On the broadest ground of principle, the DuBoulay case seems to be wrong. It may be too well settled now to be disturbed, that aside from statutory provisions, the use of one's name by another, where it causes only mortification, annoyance, chagrin and general unhappiness, and not interfering with trade, or pecuniary loss, can not be enjoined, but it is wrong in principle, and the Courts have, in later years, gone far toward correcting the wrong and setting the law right in this regard. The common law, like human nature, developed very unevenly. In spots it is a little lower than the angels, and in other places it is very low. This is one of its lowest developments. It is one of a kind with that rule of law that in a suit by a father for the seduction of a daughter he must appeal to the relation of master and servant, and sue for loss of services, *per quod servitum amisit*. On the other hand, the law recognized *pretium affectionis* as giving a value, in the eyes of one person, to articles that had no value in the markets of the world, and conceded the power of the courts to deal with and protect such property in a special and peculiar way.

"Why should the use and abuse of a man's name, bringing discomfort to his home and mortification to his family, not be prevented, as well as the use of a name which interferes with the most trifling type of trade? Confucius, I believe it was, said: 'If you

have two loaves of bread, sell one and buy a flower.' Is there any reason why the law should not recognize and protect the right to the flower as well as to the bread? Verily, 'man does not live by bread alone.'

"It is not necessary, however, in order to maintain the injunction in this case, to deny the authority of the DuBoulay case. It may be admitted that the name of a family, or individual, aside from trade considerations, will not be protected, and it may be further conceded that the mere fact of incorporation and taking a corporate name does not protect that name from imitation, and still the authorities involving the right to adopt and use a name already adopted by a corporation like the complainant order are amply sufficient to support this injunction."

The laws of Georgia provide for the manner of changing names of individuals. Civil Code, Secs. 2495, 2496. There must be a reason given which is satisfactory to the Court, and no change of name will be allowed with a view to fraudulently deprive another of a legal right. Thus a natural person has no legal right to choose a name that has been made valuable by another, and the Court will not permit the choice of such name if it will interfere with the business of, or bring mortification or disgrace to, the prior owner of the name. The Georgia law recognizes that there is property right in a name. It is a crime to impersonate another for advantage.

In Read *vs.* Sibbald, 18 Jour. of Jurisp. 392, the Scotch Court granted an interdict to restrain a name intended to represent the name of a sheriff's officer from being used in such manner as to bring discredit and ridicule upon the latter, who would thus be injured in his position in life.

14. The "Colonial Dames" cases in New York differ from and do not control this case. The word "Colonial" is geographical and generic, and the word "Dames" is generic, and neither of them singly, or both together, capable of exclusive appropriation, and no fraudulent or unfair competition is shown in those cases.

The case of Maccabees *vs.* Maccabees, supra, supports rather than conflicts with appellees' position. There both orders use

the word "Maccabees" by authority of the order of the Maccabees, and the plaintiff had permitted the defendant to use the name of the Ladies of Maccabees, and ceded to the defendant certain territory, reserving certain territory to itself, and the plaintiff permitted the defendant to use its secret work, regalia and paraphernalia, and the work and methods of both organizations were the same by mutual agreement. The Court held that the defendant was entitled to the exclusive right to the territory ceded to it, and the plaintiff was entitled to the exclusive right to the territory reserved by it, and injunction was granted accordingly. This decision further sustains the principle that a fraternal order not organized for personal pecuniary gain has the same right to have its name protected as a business concern conducted for individual profit.

The case of Supreme Lodge Knights of Pythias *vs.* Improved Order Knights of Pythias, 113 Mich. 140, 38 L. R. A. 658, is not controlling. The defendants there had been created Knights of Pythias and given the use of the name, secrets, etc., of the order by virtue of authority from the Supreme Lodge. Having been thus made Knights of Pythias and permitted to use the name of the order in the State of Michigan, they were entitled to continue to use the name, and accept others to membership in order that they might have the benefits of the fraternity. And on this principle alone, the decision in that case may be sustained. The reasoning in the opinion as to other matters is unsound. The suggestion that the prefix "Improved," to the name Order Knights of Pythias, makes a materially different name, is not supported by sound reason and is in the teeth of the overwhelming weight of authority cited supra. A decision that the name was materially changed was not necessary in that case, and, indeed, the decision of the Court goes no further than that the name with such slight variation could lawfully be taken by members of the original order, who had withdrawn from it, and the clear inference is that the name could not have been lawfully taken by persons who had never been members of the Order of Knights of Pythias.

The analogy which the learned judge seeks to make between the parties to that case and church dissenters is inapt. The right to worship God according to one's own conscience was

made absolute with the creation of our government. There can be no limitation on creeds or the names of creeds any more than there can be limitations on the rights of conscience in the worship of God. Besides, nothing can be taken from the failure of the churches to object to the adoption of similar names by dissenters. Nor from the fact that the Ancient Order of Foresters of England has never objected to the use of its name by the Order of Foresters in Canada and in America.

The facts in the Michigan case are essentially different from the facts in the case at bar, and the decision therein is not controlling, and would be hardly deemed a precedent herein. In that case, however, the Court says in the opinion: "It is enough that the names should be used under such circumstances as to lead the public to believe that the latter organization was the former, and thereby cause injury to the former corporation." It does appear in the case at bar that the defendants are so using plaintiffs' name, and are seeking to become incorporated in plaintiffs' name so as to further aggravate the infringement.

15. The appellants (plaintiffs in error here) inveigh against the appellees as a foreign corporation, saying that a foreign corporation has no right to the relief sought, and, therefore, the other appellees have no right to such relief; and, with the same breath, the appellants claim a right to infringe, and seek to maintain their cause on the ground that their society exists in virtue of a foreign corporation of which they form a part. They invoke the principle that a foreign corporation doing business in this State can not question the right of a corporation of this State to do business here under a name similar to the name of the foreign corporation, and contend that no one can object to the creation of a corporation.

It is worthy of note that the foreign corporation, to which appellants profess allegiance and under whose aegis they claim existence, is not a party to this cause. That corporation is not seeking any rights here, and has carefully avoided placing itself within the jurisdiction of the Courts of this State. If the appellants' society has called to its putative father for aid, that alleged parent has turned a deaf ear to the call. The corporate father has not come into Court to maintain its rights, or the rights of its child. The case here is that of citizens of Georgia

associated together for mutual advantage and benefits, and forming a part of a fraternal organization extending throughout the United States, and existing as a body politic in virtue of a parent corporation chartered by an Act of Congress. They say that a foreign corporation will be recognized in our Courts only by comity, and seek to have our citizens, who form a part of, and have pledged allegiance to, a fraternity which is incorporated by an Act of Congress, outlawed in the Courts of this State, because our citizens have not secured articles of incorporation in aid of, and ancillary to, the parent corporation. Let us test the rights of the parties, foreign corporation against foreign corporation, and domestic unincorporated society against domestic unincorporated society.

Neither of the corporations has been incorporated by another State or foreign government. Both claim rights of an incorporation under the laws of our government of the United States. The corporation under which appellants claim to exist is not a party to this case. If there be such corporation and its rights are here involved, we may assume that it has notice of the pendency of this case, and dares not submit itself to the jurisdiction of the Court to maintain its fancied rights. We submit that a corporation under Act of Congress is not a foreign corporation, nor a corporation created by a foreign government. But as between foreign corporations, the one which submits itself to the jurisdiction of the Courts of this State is entitled to recognition by comity, and will receive protection under our laws. The appellees' corporation and citizens of Georgia forming a part thereof are not seeking to exercise within this State any corporate powers or privileges which are denied to a like corporation in the District of Columbia, or in this or any other State of this Union, or which are contrary to the public policy of this State. The appellee corporation is senior to the corporation under which appellants claim rights. It is a presumption of law that no parties would file articles of incorporation in the District of Columbia under the Act of Congress in the same name, or colorable imitation of a name, already assumed by parties who had filed articles of incorporation under that Act of Congress. Persons who violate this presumption could gain no rights by their conduct. Under every rule of law and prin-

ciple of equity, the senior corporation will be protected in its rights, and against it the junior articles of incorporation will confer no rights or privileges. The Congress of the United States has recognized and declared the seniority of the appellee corporation, and its right to the corporate name here involved, by passing an Act expressly making the plaintiff Supreme Lodge Knights of Pythias a body politic and corporate and continuing to it the charter rights obtained by filing articles of incorporation in the District of Columbia, and twice since then amending the charter granted to the apellee corporation by special acts of Congress. If it be a question of comity, the State of Georgia will recognize and protect the plaintiff as the senior corporation under the laws of the United States, chartered by Act of Congress. We submit further that a corporation under Act of Congress is not a foreign corporation in any State in this Union, but is entitled to all the rights, privileges and immunities of a domestic corporation. Such a corporation is domestic in every State in the Union of States whose Congress has created it a body politic.

If we consider unincorporated society against unincorporated society, the appellees are entitled to the relief sought.

In a fraternal association, national in its character and design, its capital stock consists of individual membership, and each member by his membership contributes to the capital stock of the society. Whether incorporated or not incorporated, the laws of the State will protect such society and preserve its rights, including the prohibition of infringement of its name. Each member gives to the society the strength of his allegiance, and receives from it the advantages and protection it affords to its members. All of the sub-divisions or parts of the society need not be incorporated in order to procure the protection of the law. No incorporation is necessary for such purpose. A voluntary society will be protected in its rights as completely as an incorporated society. When, for purposes of convenience or necessity, a fraternal association is incorporated, each subordinate lodge and sub-division of the association thereby receives the strength and protection granted, and exists by the force of the organization and charter powers legally granted to its controlling and supreme organization.

In the case at bar, the Georgia society (eliminating the original organization and the existing corporation) is composed of citizens of Georgia, is a domestic society entitled to the protection of the laws of Georgia, and is many years senior to the appellants' society, and to the corporation (not a party to this case) under which the appellants claim the right of existence. If the appellee corporation is not entitled to the protection of our courts by comity, the members of the appellees' society are entitled to the protection of our courts under the laws of our State, which they claim as citizens of our State.

The appellees' society, without aid from the corporate rights and powers of the body politic of which it forms a part, is entitled to all the rights asserted and all the relief prayed in the petition. Surely the sovereign State of Georgia will protect its citizens' organization in a voluntary society, even if it will not recognize and protect, under the principles of comity, a corporation created by Act of Congress, of which citizens of Georgia form a part. The voluntary society of Georgia citizens, without aid from any corporate entity, is entitled to protection against an infringement of the name of their fraternal organization. The Georgia society was organized long before the appellants organized their society, and long before the corporation under which the appellants claim right.

If the appellee corporation will not be heard in this Court, the appellees' society, The Grand Lodge Knights of Pythias of Georgia, is entitled to be heard, and its rights maintained by the granting of the relief prayed by the parties appellee, who sue in behalf of a class to which they belong and which they represent. They have the right to maintain this suit and to have the relief prayed for themselves and their associates of the same class.

Carlton *vs.* So. Mutual Life Ins. Co., 72 Ga. 371.
M. & B. R. R. Co. *vs.* Gibson, 85 Ga. 2.
Civil Code, Sec. 4842.

The appellants in error contend that there can be no objection to their incorporation under the name chosen by them; that the appellees must await their incorporation, and then seek to enjoin them from continuing to operate under the cor-

porate name chosen. That they may be incorporated under the name chosen by them without let or hindrance. Then any other society or corporation may contest with them their right to continue to use their corporate name.

What is the use of advertising a petition for charter, unless it is to give those whose rights might be affected a chance to be heard? Why give a chance to be heard unless relief may be granted and injury prevented? What greater injury could flow than from the piracy of the name of an existing society or corporation?

The appellants reason in a circle and beg the question. They contend that the State must grant them a charter, and can hear no objection. That no question of their right to be incorporated can be made by any citizen or body of citizens; and that having been incorporated, they should have all the rights and exclusive powers and privileges of a corporation in Georgia. That they have the right to become incorporated in the name of a senior corporation existing under the Act of Congress, and a senior society of citizens of Georgia existing prior to said Act of Congress, and which society in Georgia forms a part of the corporation chartered by the Act of Congress. That having been so incorporated, the appellants may claim exclusive right to the corporate name in Georgia, and prevent the use of that name by those who originally adopted and used the name, and by the corporation to whom that name was given by Act of Congress, and by the citizens of Georgia who adopted and used that name before its piratical adoption by appellants and their predecessors, and who have continued to use the name by virtue of the incorporation under the general law for the incorporation of fraternities, and under the charter expressly granted by Congress. That having become incorporated in Georgia, they may enjoin appellants from using the name which appellees have made honorable and valuable, and thus effectively steal and exclusively appropriate the name which they have defiantly infringed over the express objection of appellees, and after they had asked leave of appellees to use the name and such leave had been refused.

Seniority in the selection of the name, and seniority of organization with continued use of the name to this day, and seniority of incorporation under the general law enacted by

Congress, and seniority of organization in Georgia, are all in favor of the appellees in this case. In the Hazelton Moiler Co. case, 142 Ill. 494, and all other cases involving this question, the seniority in the selection and use of the name as well as seniority in corporation controls, and the right to the name is vested in the senior corporation, and will be protected by the courts. The courts will not aid infringers in the piracy of a trade-name by granting them corporate powers in the infringed name. Nor will the Court listen to the other untenable position taken by appellants, to-wit, that the State must grant them charter powers in the name chosen by them, and may thereafter likewise grant charter powers to the appellees in the same name, and then, and not till then, the Court will hear a contest between the corporations as to which has the superior right to the name. The appellees are not objecting to the creation of a corporation, but only to the gift of their name to a corporation. Must the appellees sit idly by, or lie supinely on their backs, until the appellants are made a body corporate in appellees' name, and then rise up and object?

The filching of the good name of another for corporate purposes is not "legitimately within the purview and intention of" the Code of Georgia. Any individual, society or corporation owning a name valuable for business or social purposes may object to the appropriation of that name by persons seeking a charter, and the Court will hear such objection. While the corporation will be created, it will not be given the name which belongs to another. Such objection is not to the creation of a corporation, but to the grant of one citizen's rights to another citizen, and is to prevent the usurpation of a right belonging to another. Such objection to the grant of a corporate name may be made by a citizen as *amicus curiae*. Much more can it be made by the owner of the name involved in the petition for charter.

Civil Code, Sec. 2350.
In re Deveaux, 54 Ga. 673.
Lane *vs.* Bros. & Sisters, etc., Society, 120 Ga. 355.

16. We confess that we do not perceive the force of appellants' contention that the courts of Georgia have no jurisdiction

of this cause, because two national corporations are contending, if there be any force in that contention. We suppose that such contention is based on Article 3, Sec. 2, of the Constitution of the United States. If so, the contention is without any base. This case does not arise under the laws of the United States, and is not "a controversy between two national corporations, chartered under the same Act of Congress." The corporation to which appellants claim allegiance is not a party to this case, and that "national corporation," if it be such, is not seeking to become a Georgia corporation.

17. The appellants assert that the name they are seeking to appropriate by incorporation is not substantially the same or a colorable imitation of appellees' name. Their contention in this regard is a tacit admission that they are not entitled to be incorporated in a name which is substantially the same or a colorable imitation of appellees' names. They cite adjudicated cases, not one of which, we respectfully submit, sustains their contention.

Appellants in error cite cases involving strictly commercial names, adopted and used by banking and trust companies. Commercial necessity requires that there must be a large number of banks and loan companies and trust companies. Each of such corporations is local in its domicile. By necessity, the domicile of such a corporation is the only distinguishing sign of its identity. Banks and trust companies and loan companies must exist in every city and town and hamlet, and all such corporations always use and publish to the world their full corporate names. Not one of such corporations can exclusively appropriate as a part of its name anything except the geographical and municipal subdivision in which it has its habitat. As between such corporations, one can not publicly use a part of its corporate name so as to create the impression that it is the same as another like corporation engaged in a similar business. In the case at bar, the parties claim no identity of situs, but each claims the whole country for its field of operation and as its home.

The appellants contend that they make their name essentially different from appellees' name, by adding in their cor-

poration christening the names of the continents of the world, which useless geographical suffix they omit to use in their practical affairs with the citizens of Georgia and the United States. That useless and ordinarily unused suffix does not make a new name which is materially different from appellees' name, and the fault would not be cured or the right to infringe secured, if they should add to their name the words, "World, Third Planet, Solar System, Universe," so that they might claim to be Knights of Pythias universal and of the universe. We can not undertake here to discuss seriatim the cases cited by appellants on the question of similarity of names. All of them yield to the principles of law and equity we have announced. Contrary to those principles, the appellants are seeking to use a name whereby they may deceive the public, and deceive those members of the public they seek as members and by parading in appellees' name bring appellees' society into disrepeet and disrepute, with the attendant consequence of lessening the value of membership franchise in appellees' fraternity, and deter desirable white American citizens from joining appellees' organization, and thereby inflict on appellees monetary loss, and the greater loss of social and fraternal strength and benefits. The name of a natural person made valuable by him can not be appropriated as a cardinal part of a corporate name, for the advantage of a corporation. The name chosen by a society composed of men, and made valuable by their use of the name, is likewise exempt from appropriation by others as a corporate name.

18. If the rule regarding benevolent associations is different from the rule in reference to corporations engaged in trade for pecuniary profit, the rule in favor of benevolent associations is broader and more generous. The policy of the law is to encourage men to associate themselves together for the purpose of inculcating and cultivating the principles of friendship and patriotism, the development and maintenance of the best social relations, and the protection and maintenance of the best municipal government. The names chosen by such associations of citizens are entitled to, and will receive, as much protection as the names chosen by commercial corporations.

No case cited by appellants in error is in conflict with this principle. Wellenvess *vs.* Grand Lodge Knights of Pythias, 40 L. R. A. 488, touches no principle involved in the case at bar. By analogy, the principles set out in that case support our contentions that the State will not interfere with the internal concerns of a fraternity, but will promote the fraternity by securing to it all of its legal rights. There the Court merely held that it would not compel the communication of the secret password to a complaining member, or otherwise interfere with the secret work of a social benevolent society, any more than it would revise or question ordinary acts of church discipline. Thus the Court announced the principle that a social benevolent society shall have freedom, without interference of courts, in the sphere of its purposes, and will be protected in the exercise of its rights and functions within that sphere.

So also may other cases cited by appellants in error be criticized.

19. We will not discuss the grounds of the motion for new trial seriatim. We have announced and endeavored to maintain the legal and equitable principles which control all of the exceptions taken by the appellant. The charge by the Court was in accordance with these principles, and the jury was fully and fairly instructed as to how all issues of fact should be considered for proper determination. There is really no substantial issue of fact made by the voluminous record in this case. The verdict rendered by the jury is the only verdict that could be legally rendered, if the controlling principles of law and equity are as contended by appellees in error. If there be in the charge of the Court any errors discernable by hypercritical scrutiny, they are not such errors as would invalidate the verdict, or justify a resubmission of the issues of fact to another jury.

20. The appellants seek to escape by the last resource of wrongdoers. They say, they have profited by their wrongdoing so long that, by a doctrine of elimination of offenses, their offense itself is eliminated, and they are entitled to continue in their wrongdoing. That the appellees have suffered so much and so long from appellants' impudent infringement, that the appellees should be made to continue to suffer from such infringement. That appellants have defiantly assumed to use

appellees' name, after having been expressly denied that privilege, and because of their bold and continued piracy they have become entitled not only to use appellees' name, but to usurp that name, through the medium of a corporation that they will wring from the State, and not only get to themselves the right to the name, but also take away from appellees their right to use that name.

On examination of cases cited by appellants' attorneys, we do not perceive that the decisions of the courts give them aid or comfort in their nefarious infringement and fraudulent effort to appropriate appellees' name, on the doctrines of estoppel and laches.

The appellees have lost nothing by laches, and the appellants can take nothing by having built up an order under a name boldly pirated.

"Where there is no statutory provision as to the choice of names, and parties organize a corporation under general laws, they choose a name at their peril."

> American Order of Scottish Clans *vs.* Merrill, 151 Mass. 558. Cited with approval in Sec. 581, 2d Pomeroy's Equitable Remedies.

The appellees' order has never permitted, nor authorized, nor acquiesced in the infringement of its name by appellants' order, and the jury so found in its verdict. On the contrary, appellees expressly refused to appellants the use of their name, and thus, from the beginning, warned appellants that the unauthorized use of that name would be at appellants' peril. Mere acquiescence in the infringement of a trade-name can not amount to more than a license at will, which can be terminated at any time by any suit for injunction. Laches defeats the right to damages only, and does not defeat the right to have further infringement restrained. In order for appellant to relieve himself from damages because of the appellees' laches, he must rebut the presumption of fraud which is inferred from his infringement, and by so doing he may save himself from damages, but can not get to himself the right to further violate the appellees' right of property in its trade-name.

The appellees here have not been guilty of laches. They have moved at the first opportunity, so far as the record shows.

as soon as the appellants came out into the open, so that the Court's jurisdiction of them could be readily invoked. Appellees are seeking to restrain the first effort appellants have ever made to become incorporated in Georgia, and filed their petition to accomplish such restraint in less than thirty days after the appellants' application for incorporation was filed. The appellants' alleged corporation has never yet come within the jurisdiction of Georgia, and even now carefully avoids becoming a party to this case.

The appellees' order is not seeking any accounting or damages, but only that the further violation of its rights to its name by appellants' order be enjoined. "The intentional use of another's trade-mark is a fraud; and when the excuse is that the owner permitted such use, that excuse is disposed of by affirmative information to put a stop to it, and no estoppel arises." Consent from knowledge and silence "lasts no longer than the silence from which it springs; it is, in reality, no more than revokable license." This is especially true if, as appellants contend, the name is of no value, is no vested right, and no property right.

The argument that the bill is an attempt to revoke the charter of or destroy appellants' society, can not prevail. The same argument was advanced in Armington *vs.* Palmer, 21 R. I. 109, in which it was held that under General Laws R. I., Chapter 176, Sec. 7, the corporation, if enjoined from the use of the name it had chosen, might still exist and enjoy its franchise, except in the wrongful use of the name it had chosen, and might choose another name.

Aiello *vs.* Montecalfo, 21 R. I. 496.

The appellants adopted the name of appellees' order at appellants' peril. The restraint of the further unlawful use of the name will not interfere with any of the property rights of appellants. They may be compelled to change the name of thir order, and allowed to continue their operations, as corporations and societies frequently voluntarily do, without injury to their rights, titles and interest in property, real or personal. This is especially true if, as appellants contend, the name is of no value, carries no vested right and is no property right. They may call themselves "nights of Washington" (after

Booker), or "Knights of Jonathan," or "Knights of Ham," or "Knights of North America, South America, Europe, Asia, Africa and Australia," and obtain their charter and continue in their good works.

28 Am. & Eng. Enc. of Law, 397.
Saxlehner *vs.* Eisner, etc., Co., 178 U. S. 19, 39.
McLean *vs.* Fleming, 96 U. S. 245, 258.
McIntire *vs.* Prior, 173 U. S. 54.
Menendez *vs.* Holt, 128 U. S. 515, 523.
Bissell Chilled Plough Works *vs.* Bissell Plough Co., 121 Fed. 357.
La Republique Francaise *vs.* Schultz, 102 Fed. 152.
Paul on Trade-Marks, 109.

21. The Court will take judicial cognizance of social conditions and social necessities in these United States of America, and announce and enforce the principles of equity, which will conserve social peace and harmony, without violating any private right. Following In Re Deveaux, 54 Ga. 673, and the same principle recognized and announced by all the courts of our country, Federal and State, which have been called upon to pronounce judgment where this principle was involved, the public necessity and the requisites of society, law and equity require that appellees have the decree which was rendered by the Court below. The appellees, as citizens and as members of the appellees' fraternity, hold themselves bound to support law and order under our government and its constituted authorities. We would not have the Court violate any rule of law or principle of equity. We ask that our rights be ascertained and maintained under correct rules of law and principles of equity. We assert our rights, and pray the adjudication of the Court, in the name and on behalf of more than 700,000 white American citizens who constitute appellees' Order Knights of Pythias, 15,000 of whom are citizens of the State of Georgia.

The argument that this bill is an attempt to prevent the appellants from becoming a corporation, or to destroy appellants' society from continuing in its work, is sophistical and can not prevail. There is no effort here to prevent the continuance of appellants in their work, either as a society or corporation. The

only contention is that appellants must proceed in a name to which they are entitled, and not in the name owned by appellees.

Respectfully submitted,

JOHN P. ROSS,
HAMILTON DOUGLAS,
Attorneys for Appellees.

P. O. Addresses:

John P. Ross—Macon, Ga.
Hamilton Douglas—Atlanta, Ga.

ARGUMENT.

I.

The contention of appellants as to any Federal question being involved under section 1 of article 4 of the Constitution must fall to the ground by an inspection of the Record which discloses no corporation of any character as parties.

The claim of appellants is that it is a case between two Federal corporations, and therefore a Federal question is involved. The appellees claim that no Federal corporations are involved and even admitting, for the sake of the argument, that Federal corporations were involved, claim that the State of Georgia can make restrictions on any foreign corporations before permitting them to do business in the State of Georgia, such as a provision that no corporation with the same name and style as a corporation already doing business in the State of Georgia, could do business in Georgia.

1. "This proposition is not supported by the record, this suit was brought against Creswill, et al., as individuals acting and seeking a charter. The Supreme Lodge of the order of which they claimed to be members has never been made a party to this case, and is not here asserting any corporate rights."

From decision of Judge Edwards in case of Creswill, et al., *vs.* Grand Lodge K. P. of Georgia, 133 Ga., 837, 850.

2. A party who seeks and is given opportunity in the State courts to litigate the rights claimed by it can not have the judgment reviewed on the ground that due process of law was denied because the litigation did not result successfully.

Remington Paper Co. *vs.* Watson, 173 U. S. 443.
Delehanty *vs.* Pitkin, 199 U. S. 602.
Archer *vs.* Bldg. & Loan Assn., 179 U. S. 679.

3. A State may discriminate against foreign corporations, for they are not "citizens," though they are "persons," in the sense in which these words are used in the Federal Constitution; and it has the right to impose conditions on foreign corporations doing business in the State, to the extent of holding their contracts void when entered into in violation of such con-

ditions, or otherwise punish or regulate by the imposition of civil liability.

Noble *vs.* Mitchell, 164 U. S. 368.

4. The only limitation upon this power of the State arises where the corporation is in the employ of the Federal government, or where its business is strictly commerce, interstate or foreign. Such commerce is not to be restricted by State authority.

Pembina Consol. Silver. Min. & Mill. Co. *vs.* Pa., 125 U. S. 181.

II.

There is no Federal question involved.

The claim of appellants is that they have been deprived of property without due process of law, contrary to the 14th Amendment of the Constitution, which provides that "no person shall be deprived of life, liberty or property without due process of law."

Appellees respectfully submit that the appellants have not been deprived of property without due process of law, having had such trial as is provided by the statutes of Georgia.

1. Where the parties have been fully heard in the regular course of judicial proceedings an erroneous decision of a State court does not deprive the unsuccessful party of his property without due process of law within the 14th Amendment. The adjudication of plaintiffs' claims by the courts of his own State is due process of law.

Central Land Co. *vs.* Laidley, 159 U. S. 103.
Morly *vs.* Lakeshore & M. S. R. Co., 146 U. S. 162.
Bergeman *vs.* Bucher, 157 U. S. 655.
Knox *vs.* Exchange Bank, 12 Wall. 379.

2. The 14th Amendment can not be availed of "as a means of bringing to the test of the decision of this Court the abstract opinions of every unsuccessful litigant in the State court, of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded.

Davidson *vs.* New Orleans, 96 U. S. 97, 104.

3. Where the validity of a State statute is not drawn in question in a State court but the jurisdiction of the Supreme Court of the United States to review the judgment of a State court is invoked upon the ground that the acts of the State officers, acting under the authority of the statute, deprived the party of due process of law, a federal question is not involved, and the Supreme Court of the United States has no jurisdiction.

French *vs.* Taylor, 199 U. S. 274.
Castillo *vs.* McConnico, 168 U. S. 674.
Lehigh *vs.* Green, 193 U. S. 79.
South Carolina *vs.* Jennings, 204 U. S. 667.

4. This court is without jurisdiction unless a Federal question was seasonably raised and presented to the court below, at the proper time in the proper way.

Spies *vs.* Illinois, 123 U. S. 131.

And this means, in such season that the court could deal with it effectively, and according to its merits and to justice.

Brooks *vs.* Missouri, 124 U. S. 394.
Baldwin *vs.* Kansas, 129 U. S. 52.
Montana R. Co. *vs.* Warren, 137 U. S. 348.
Re Wood, 140 U. S. 278.
Spencer *vs.* Marchant, 125 U. S. 345.

5. To give this Court jurisdiction, it must appear affirmatively, on the face of the record, not only that a Federal question was raised, but that it was decided, or that its decision was necessary to judgment or decree rendered in case.

Detroit City R. R. Co. *vs.* Guthard, 114 U. S. 133.
Hagan *vs.* California, 154 U. S. 649.
And cases cited in Digest U. S. Sup. Court Reports, Vol. 1, p. 419, Sec. 2299.

6. "The pleadings of the plaintiff in this case contain no reference to the social status of the defendants or their color. The defendants, in an amendment to their original answer, set up that the members of the defendants' order are members of the negro race, and the order of the plaintiffs is made up of

members of the Caucasian race. The able judge trying this case, in his instruction to the jury, made no reference to the matters set up by this amendment on the part of the defendants or to the racial or social status of either the plaintiffs or defendants. Neither do we think that the defendants, by merely alleging their color, can introduce this subject into the case to make a Federal question or to claim any superior rights thereby. The question of color raised by the defendants certainly does not entitle them to greater rights in the case under the 14th Amendment to the Federal Constitution than they would have enjoyed had they been members of the same race as the plaintiffs."

From decision of Judge Edwards in case of Creswill, et al., *vs.* Grand Lodge Knights of Pythias of Georgia, 133 Ga., p. 837, 851.

The appellants in this, the case now pending in the Supreme Court of the United States, were the defendants in the above-stated case.

7. The requirement of the U. S. Cons. under the 14th Amendment is met if the trial is according to the settled course of judicial proceedings as established by the laws of the State.

Walker *vs.* Sauvinet, 92 U. S. 90.
Slaughter-House Cases, 16 Wall. 36.
Bradwell *vs.* Illinois, 16 Wall. 130.
Bartemeyer *vs.* Iowa, 18 Wall. 130.

8. Any legal proceeding enforced by public authority, whether sanctioned by age or custom, or newly devised in the discretion of legislative power, in furtherance of the general public good, which preserves and regards these principles of liberty and justice, must be held to be due process of law.

Hurtado *vs.* California, 110 U. S. 516, 537.

9. An erroneous judgment of a State court proceeding upon the principles of general law only, does not work a deprivation of liberty or property without due process of law.

Marrow *vs.* Brinkley, 129 U. S. 178.
Re Converse, 137 U. S. 624.

III.

Appellees claim that if there is a Federal question involved it is only a colorable one and has been placed in the record for the purpose of appeal. If this is true, appellees claim that there is no ground for Federal jurisdiction.

1. To justify writ of error from the Supreme Court of the U. S. to review the judgment of a State court, the record must show that the judgment rested upon the disposition of a Federal question.

Marsh *vs.* Nichols S. & Co., 140 U. S. 344.

2. The record must show affirmatively or by fair implication that some Federal question was involved which was necessary to the determination of the cause.

Boughton *vs.* Am. Ex. Nat. Bk., 104 U. S. 427.
Michigan C. R. Co. *vs.* Mich. Southern R. Co., 19 Howard 378.
Fleming *vs.* Clark, 12 Allen 98.

3. It is not enough to give this Court jurisdiction over a State court for a record to show that a Federal question was argued or presented to that Court for decision.

It must appear that the decision of a Federal question was necessary to the determination of the cause and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.

Brown *vs.* Atwell, 92 U. S. 327.

4. The general rule is that where the judgment of a State court rests upon an independent, separate ground of local or general law, broad enough or sufficient in itself to cover the essential issues, and control the rights of the parties, however the Federal question raised on the record might be determined, this Court will affirm or dismiss, as one course or the other may be appropriate, without considering that question.

Justice Harlan in his decision in the case of the C. B. & Q. R. R. Co. *vs.* Illinois, 200 U. S. 561, 580.

5. "The pleadings of the plaintiff in this case contain no reference to the social status of the defendants or their color.

The defendants, in an amendment to their original answer, set up that the members of the defendants' order are members of the negro race, and the order of the plaintiffs is made up of members of the Caucasian race. The able judge trying this case, in his instructions to the jury, made no reference to the matters set up by this amendment on the part of the defendants or to the racial or social status of either the plaintiffs or defendants. Neither do we think that the defendants, by merely alleging their color, can introduce this subject into the case to make a Federal question or the claim any superior rights thereby. The question of color raised by defendants certainly does not entitle them to greater rights in the case under the 14th Amendment to the Federal Constitution than they would have enjoyed had they been members of the same race as the plaintiffs."

From decision of Justice Edwards in case of Creswill, et al., *vs.* Grand Lodge Knights of Pythias of Ga., 133 Ga. pp. 837, 851.

The apppellants in this, the case now pending in the Supreme Court of the U. S., were the defendants in the above stated case.

IV.

Appellees claim that this court can only consider the Federal questions involved, and that if the decision of the Supreme Court of Georgia was not based on the Federal questions, but was based entirely on questions and issues independent of the Federal questions, the decision of the Supreme Court of Georgia in this case must be affirmed.

1. Only Federal questions can be considered by the Supreme Court of the United States in reviewing a judgment of a State court.

> Chicago L. Ins. Co. *vs.* Nudlee, 113 U. S. 574.
> Cornell Univ. *vs.* Fisk, 136 U. S. 152.
> And cases cited in Digests of U. S. Sup. Ct. Reports, Vol. 1, p. 398, Sec. 2072.

2. Where a right claimed under the laws of the United States is denied by the judgment of the State court, the examination by the Supreme Court of the United States upon writ of error must be confined to the error alleged in the decision of

the State court upon the construction and effect of the Federal law.

Pollard *vs.* Kibbe, 14 Pet. 353.
Wallace *vs.* Parker, 6 Pet. 680.
Austin *vs.* Boston, 7 Wall. 694.

3. Where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution of the United States, another question not Federal has also been raised and decided against such party, the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment.

150 U. S. 361.
132 U. S. 554.
133 U. S. 380.

4. Where the Court based its judgment not on a law raising a Federal question, but on an independent ground, this Court will not take jurisdiction of the case, even though it might think the decision of the State court an unsound one.

DeSaussure *vs.* Gailard, 127 U. S. 216.

5. The general rule is that where the judgment of the State court rests upon an independent, separate ground of local or general law, broad enough in itself to cover the essential issues, and control the rights of the parties, however the Federal question raised on the record might be determined, this Court will affirm or dismiss, as the one course or the other may be appropriate, without considering that question.

C. B. & Q. R. R. Co. *vs.* Ill., 200 U. S. 561, 580.

6. The Supreme Court of the United States can not proceed, in reviewing a State court, upon general ideas of the requirements of natural justice apart from the provisions of the Constitution supposed to be involved.

N. Y. and N. E. R. Co. *vs.* Bristol, 151 U. S. 556.
And cases cited in Digest of U. S. Sup. Ct. Rep., Vol. 1, p. 397, Sec. 2071.

7. When a State court has based its decision on a local or State question, the logical course here is to dismiss the writ of error.

Eustis *vs.* Bolles, 150 U. S. 370.
Ft. S. R. Co. *vs.* Merriam, 156 U. S. 478.
Hamblin *vs.* Western Land Co., 147 U. S. 531.
Costello *vs.* McMonico, 168 U. S. 674.

8. Where the Federal questions involved in a case were correctly decided by the State Supreme Court, the judgment of that court must be affirmed without determining any other questions not of a Federal character.

Swope *vs.* Leffingwill, 105 U. S. 3.
Myrick *vs.* Thompson, 99 U. S. 291.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

CHARLES D. CRESWILL, et al.,
Plaintiffs in Error,

v.

GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA,
Defendant in Error.

Writ of Error to the Supreme Court of Georgia

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR

JOHN P. ROSS, Macon, Ga.,
HAMILTON DOUGLAS, Atlanta, Ga.,
of Counsel for Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

No. 235

CHARLES D. CRESWILL et al., Plaintiffs in error, v. GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA, Defendant in Error.	Writ of Error to the Supreme Court of Georgia

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SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

The Supplemental Brief for Plaintiffs in Error seems to justify the filing of this supplemental brief.

SUPPLEMENTAL STATEMENT OF FACTS.

It is our wish to add but little to the voluminous statement of facts contained in the briefs heretofore filed. We wish to add:

The society represented by plaintiffs in error does not confine its membership to the colored race, as stated in the main brief for plaintiffs in error. The conditions of eligibility for membership are fixed

in Section 220 of the Supreme Statutes of the order represented by the plaintiffs in error, and there is no limitation of membership to colored persons. (Record, Chapter 26, original p. 272, printed p. 130.) See also the application for charter filed by plaintiffs in error in the Superior Court of Fulton County, Georgia. (Printed Record pp. 29 and 30.)

BRIEF OF LAW.

It is suggested by failure to put the Supreme Lodge Knights of Pythias and Nickerson, et al., plaintiffs in the trial court, into the bill of exceptions from the trial court to the Supreme Court of Georgia, neither of these parties is before this Court and the decree as to each of them, not having been taken to the Supreme Court of Georgia for review, is a final and binding decree.

Creswill, et al., *v.* Knights of Pythias of Ga., 133 Ga. 837.
Orr *v.* Webb, 112 Ga. 808.
McCain *v.* Sutlive, et al., 109 Ga. 548.
Coleman *v.* Board of Education, 136 Ga. 844 (2).

It is not true that there is a break in the continuity of the corporate existence of the Supreme Lodge Knights of Pythias, one of plaintiffs in the trial court.

Act of Congress of 1870, entitled "An Act to Provide for the Creation of Corporations in the District of Columbia by General Law," U. S. Stat. 16, Chap. 80, pp. 98-116.

Failure to use trade mark or trade name for period of four years does not lose to the original owner right to use it after four years.

Burt *v.* Tucker, 178 Mass. 493.

That Knights of Pythias, plaintiffs in trial court, has existed as an organization continuously from the time of the organization of the society by Rathbone until the present time is shown by the record and is a matter of common knowledge.

Creswill, et al., *v.* Knights of Pythias, 133 Ga. 841.
Supreme Lodge K. P. *v.* Withers, 177 U. S. 260.
Act of Congress of June 29, 1894, 28 Stat. at L., 96, Chap. 119.

Continuity of Grand Lodge Knights of Pythias, defendant in error's order from the time of Rathbone to the present time shown by the record.

Printed Record, pages 21, 131, 28, 29, 101, 102, 103, 104, 95, 60, 63.

A corporation organized in the District of Columbia under the Act of May 5, 1870, is not different from any corporation organized under the laws of any state but is a "foreign" corporation when it seeks to do business in a state.

Sec. 8, Art. 1, Par. 16, U. S. Constitution.
Thompson on Corporations, 2d Edition, Vol. 1, Sec. 138.
Stoutenburgh *v.* Hennick, 129 U. S. 141.
Daley, et al., *v.* Nat. L. I. Co. of the U. S. A., 64 Ind. 1.
Williams *v.* Creswill, 51 Miss. 817.

Plaintiffs in error did not petition as a corporation for a charter and could not successfully.

Paul *v.* Va., 8 Wall. 168.
Pembina Consol. Min. & Mill. Co. *v.* Pa., 125 U. S. 181.

Plaintiffs in error petitioned for charter solely as

individuals. Their Supreme Lodge was not made a party.

Printed Record pp. 29, 30.

Creswill, et al., *v.* Knights of Pythias, 133 Ga. 838.

ARGUMENT.

I.

WHO ARE PARTIES DEFENDANT IN THIS CASE.

It is respectfully suggested that neither T. H. Nickerson, D. J. Bailey, John P. Ross, Wm. H. Leopold, R. C. Norman, C. M. Walker, B. D. Brantley and Geo. T. Cann, named as defendants in error in this Court, nor the Supreme Lodge Knights of Pythias, one of the parties plaintiff in the trial court, so frequently referred to in briefs of plaintiffs in error, as defendants in error, *are parties in this cause.*

Neither of them was named in the bill of exceptions which took the case from the trial court to the Supreme Court of Georgia. The only party defendant named in the bill of exceptions is the *Grand Lodge Knights of Pythias of Georgia.* (Printed Record p. 18). The case sounds in the printed volume of Georgia Reports as "Creswill, et al., v. Grand Lodge Knights of Pythias of Georgia," 133 Ga. 837.

Down to the act of the Legislature of Georgia of August 21, 1911, it has been universally held in the Supreme Court of Georgia that one not named in the bill of exceptions as party thereto was not a party; that an acknowledgment of service as "attorney for defendants in error" does not acknowledge service for any one not named in the bill. (White v. Bleckley, 105 Ga. 173).

In Orr v. Webb, 112 Ga. 808, it is decided: "This Court has repeatedly ruled that the abbreviation 'et

al.' when occurring in a bill of exceptions after the name of a party therein designated can not be held to include any other person who figured as a party in the trial court; and that an acknowledgment of service for 'defendant in error' or for 'defendants in error' does not cover any person who was not at the time of such acknowledgment . . . actually named or designated" in the bill of exceptions.

In McCain v. Sutlive, et. al., 109 Ga. 548, top of page, it is held: "It is now too well settled to admit of doubt that those only are parties to the bill of exceptions who are mentioned therein as such and that an acknowledgment of service for 'defendants in error' relates to those only who are at the time it is entered actually such defendants." Numerous other cases cited in above three mentioned Georgia Reports.

And in the case of Coleman v. Board of Education, 136 Ga. 844 (2), decided September 25, 1911, the ruling was as follows: "Under the former rulings of this court prior to the Act approved August 21st, 1911, the abbreviations 'et al.,' when occurring in a bill of exceptions after the name of a party therein designated, can not be held to include any other person who figured as a party in the trial court; and an acknowledgment of service for 'defendant in error' or for 'defendants in error,' does not cover any person who was not, at the time such acknowledgment was entered upon the bill of exceptions, actually named or designated therein as a party defendant in error."

This writ of error probably comes to this court under Sec. 709 of the Revised Statutes of the United States. (U. S. Comp. Stat. 1901, p. 575.)

1. Under this statute the decree must be a final decree.

2. It must be a final decree in the highest court of the State of Georgia. This is admitted as to the Grand Lodge of Georgia, but it is suggested that as to Nickerson et al., who sued in behalf of a class, and as to the Supreme Lodge Knights of Pythias it is denied; because no appeal as to the Supreme Lodge Knights of Pythias and as to Nickerson et al. was ever taken from the trial court to the Supreme Court of Georgia, and the final decree as to these parties was had in the trial court of Georgia.

It is well settled that the parties to a cause can not confer jurisdiction upon the courts of the United States by consent, where none would exist without it. See cases cited in Michie's Enc. U. S. S. C. Reps., Vol. 7, p. 741, note 15.

Neither the failure of the parties to object, nor their consent, can confer jurisdiction on the Supreme court where it does not exist. Michie's Enc. U. S. S. C. Reports, Vol. 4, p. 1018 (f).

Wherefore, it is respectfully suggested that the decree rendered in the trial court in favor of the Supreme Lodge Knights of Pythias and Nickerson, et al., plaintiffs in the trial court not having been taken to the Supreme Court of Georgia for review is a final and binding decree.

II.

IT IS NOT TRUE THAT THERE IS A BREAK IN THE CONTINUITY OF THE CORPORATE EXISTENCE OF THE SUPREME LODGE KNIGHTS OF PYTHIAS, ONE OF PLAINTIFFS IN THE TRIAL COURT.

The several changes in the charter originally granted to the Supreme Lodge Knights of Pythias are not merely amendments to the charter first granted but are each of them new articles of incorporation and each extends for a period of twenty years from the time when they were respectively granted, so that the Supreme Lodge Knights of Pythias has been continuously a chartered corporation.

Sec. 5 of the Act of Congress of 1870 (16 U. S. Stat. at L., Chap. 80, pp. 98, 116) entitled "An Act to Provide for the Creation of Corporations in the District of Columbia by General Law," provides for the incorporation of "Societies, Benevolent, Educational, etc." Sec. 3, paragraph 6, provides as follows: "The trustees, directors or stockholders of any existing benevolent, charitable, educational, musical, literary, scientific, religious or missionary corporation, including societies formed for mutual improvement, may, by conforming to the requirements of the several sections of this act, reincorporate themselves or continue their existing corporate powers under this act, or may change their name, stating in their certificate the original name of such cor-

poration as well as their new name assumed; and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued."

The same act provided: "The provisions of this act shall not extend to nor apply to any association or individual who shall, in the certificate filed with the register of deeds, use or specify a name or style the same as that of any previously existing incorporated body in the District of Columbia."

The Supreme Lodge Knights of Pythias, plaintiff in trial court, obtained articles of incorporation January 7, 1876 (record p. 73) in which they subscribed to all the terms and conditions of the act of Congress of May 5, 1870, in the certificate to obtain which incorporation they expressly stated that they "ratify and reaffirm" the original articles of incorporation and declared that "said Supreme Lodge shall be and remain a body corporate for the term of 20 years." So that under said articles of reincorporation, they were operating under a charter which expired 20 years from January 7, 1876, or January 7, 1896.

Said Supreme Lodge, on May 6, 1882, obtained under and agreeably to said act of Congress of May 5, 1870, further letters of reincorporation, the certificate of which expressly states that "the said Supreme Lodge shall be and remain a body corporate for the term of 20 years." So that, under said letters of reincorporation, the said charter would not have expired until May 5, 1902, prior to which the acts of Congress of 1894 and 1900 were obtained.

The act of Congress of 1894 incorporated the Supreme Lodge Knights of Pythias as the successor of

the Supreme Lodge Knights of Pythias incorporated under the act of 1870, and provides "that all claims, accounts, debts, things in action, or other matter of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias, mentioned in Section 1 of this act, shall survive to and against the present body corporate and politic hereby created; provided that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contracts by limitation of time."

Said Supreme Lodge Knights of Pythias existed in fact as well in name continuously and itself and through its subordinate lodges owned and held property, including its name, and continued the exercise of its right to the use of its name and other insignia. In the case of Burt *v.* Tucker, 178 Mass. 493, it was held "a manufacturer of shoes in Massachusetts adopted a label with the word 'Knickerbocker' as a general mark for his goods or a large variety of them, although he used other marks for goods made to order for particular firms. Two years later, his factory was burned, and he went out of business and for four years was in the employ of others as a salesman in other states. At the end of that time, he resumed business for himself in Philadelphia, selling the goods of a New Jersey company as a jobber, adopted the title 'Knickerbocker Shoe Company' and used the word 'Knickerbocker' as a trade mark regarding it as a valuable possession and that he resumed it at the first opportunity. During the four years that this former manufacturer was working for others, the word 'Knickerbocker' had been used as a trade mark by another manufacturer of shoes.

In a suit brought by the last named manufacturer against the first named, for alleged infringement of his trade mark, it was held, that the judge who tried the case was warranted in finding that the defendant had made the word 'Knickerbocker' a trade mark, that he had not abandoned it, and that his present use of it was within the scope of the original acquisition."

III.

THAT THE DEFENDANT IN ERROR INCLUDING ITS SUPREME LODGE WERE IN CONTINUOUS EXISTENCE SINCE THE TIME WHEN J. H. RATHBONE FOUNDED THE ORDER AND SINCE THE TIME IT WAS REGULARLY INCORPORATED WAS A MATTER OF SUCH COMMON KNOWLEDGE IN THE TRIAL COURT THAT IT WAS ACCEPTED AS A FACT, AND WAS NOT CONTROVERTED; AND BESIDES, IS SHOWN BY THE EVIDENCE IN THE RECORD.

It may be said that it was not denied, it was tacitly agreed in the trial court that the defendant in error had been continuously in existence from the time of the organization of the society of Rathbone until the incorporation in 1870, and from that time until the time of the trial of this case. No denial, no word or scrap of evidence was put in by plaintiffs in error to the contrary.

This fact was so adjudicated by the Supreme Court of Georgia which, in deciding the case, said: "Seniority in the selection of the name, seniority of or-

ganization under the name with its continued use, and seniority of incorporation under the general laws enacted by Congress and seniority of organization in Georgia are all in favor of the plaintiff's case." (Creswill et al., *v.* Grand Lodge Knights of Pythias, 133 Ga. 841). The Supreme Court of Georgia further said: "There is really very little if any material conflict of evidence between the parties." (Creswill et al., *v.* Grand Lodge Knights of Pythias, 133 Ga. 842).

In the case of Supreme Lodge Knights of Pythias *v.* Withers, (177 U. S. 260) it was treated by this court as a matter of common knowledge and was shown that the Supreme Lodge Knights of Pythias, one of plaintiffs in the trial court, had existed continuously from the time of its first incorporation. Mr. Justice Brown delivered the opinion and used the following language: "The Supreme Lodge Knights of Pythias is a fraternal and benevolent society, incorporated by an Act of Congress of June 29, 1894 (28 Stat. at L. 96, Chap. 119), as the successor of a former corporation of the same name, organized under an act approved May 5, 1870. The beneficial or insurance branch of the order is known as the endowment rank, which is composed of those members of the order who have taken out benefit certificates. Such members are admitted into local subordinate branches as sections. The members of each section to elect their own president and secretary."

The case there decided was one growing out of the insurance branch of the order of Knights of Pythias, wherein the person took the insurance January 1,

1883, and died in 1895, the question turning on whether the collector of premiums was the agent of the assured or of the Knights of Pythias. At the trial of the case, it was assumed that the defendants in error in this court had had continuous existence since the time of Rathbone.

IV.

THE CONTINUITY OF DEFENDANT IN ERROR'S ORDER FROM THE TIME OF RATHBONE UNTIL THE TRIAL OF THIS CAUSE IS ADMITTED AND SHOWN BY THE CONSTITUTION AND SUPREME STATUTES OF PLAINTIFFS IN ERROR'S SOCIETY.

Among other admissions are the following:

"Chapter L. Pythian Period.

"371. The Order of Knights of Pythias having been instituted and established on the 19th day of February, 1864, the Pythian period is hereby declared to date therefrom, and each and every year thereafter succeeded in numerical order, commencing with that date. (Printed Record p. 131).

"Supplement. Chapter LX.

"The Early Progress of the Knights of Pythias.

"The Order was organized by J. H. Rathbone and others, in the City of Washington, D. C., February 19, 1864, at Temperance Hall, Friday evening, for the purpose of disseminating the principles of Friendship, Charity and Benevolence.

"At the session of the Supreme Lodge of the Knights of Pythias of the World, held at Richmond, Va., March 8, 1869, an application for a charter from a body of colored citizens of Philadelphia, Pa., praying that they might be permitted to have and enjoy the great benefits and privileges of the Order of the Knights of Pythias, but such was refused on account of their color.

"E. A. Lightfoot, T. W. Stringer and others were regularly initiated into the mysteries of the Order of Page, Esquire Knight, etc., in a regular lodge, working under the control of the Supreme Lodge of Knights of Pythias of the World.

"Having the example of the great and good J. H. Rathbone, the founder of the Order, actuated by a similar motive to extend Friendship, Charity, and Benevolence, Supreme Grand Council of the Knights of Pythias to be known as the Supreme Lodge of North America, South America, Europe, Asia and Africa were instituted, for the purpose of extending its benefits to all persons, without distinction of race or color, Lightfoot Lodge No. 1, in the City of Vicksburg, State of Mississippi, March 26, 1880." (Printed Record, p. 131).

V.

THE EXISTENCE OF THE GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA, DEFENDANT IN ERROR, WAS CONTINUOUS SINCE MARCH 20, 1871, TO DATE OF TRIAL, AND THEREFORE ENJOYED RIGHTS PRIOR TO ANY CLAIMED BY PLAINTIFFS IN ERROR.

1. *Documentary Evidence.*

(a) Charter from Supreme Lodge (Printed Record p. 28-29), bearing date March 20, 1871, in which it is recited that the Supreme Lodge Knights of Pythias had received petition for the formation of the Grand Lodge and same was granted, and authorized the Grand Lodge of Georgia to form subordinate lodges, etc.

(b) The proceedings of the Grand Lodge Knights of Pythias of Georgia held on March 20, 1871. (Printed Record p. 101).

(c) The Constitution adopted for the Grand Lodge of Georgia on March 20, 1871, wherein it was stated "this body shall be known as the Grand Lodge Knights of Pythias of the State of Georgia," and further that it had jurisdiction of all lodges of Knights of Pythias within the State of Georgia, and had the right and power to grant charters, etc., as appears in the Printed Record p. 102.

(d) The minutes showing the proceedings of the Grand Lodge Knights of Pythias of Georgia year

by year from 1871 to 1876. (Printed Record bot. p. 100 and p. 101).

(e) A volume published by authority of the Grand Lodge Knights of Pythias of Georgia, having printed on front cover and title page as follows: "Official Record and Proceedings of the Grand Lodge of Georgia. Thirty-seventh Annual Convention held at Augusta, Ga., May 15th and 16th, 1906. Pythian Period 43," together with various impressions and seals of the order, together with an extract from the meeting held by the Grand Lodge Knights of Pythias of Georgia in its Thirty-seventh Annual Convention in the City of Augusta at 9 o'clock a. m. of May 15, 1906, which extract also contained statement of the financial condition of subordinate lodges, the names of officers elected for the year 1906-7, including T. H. Nickerson, one of defendants in error; also the Journal of the Grand Lodge session of 1907, showing similar information as to the continued and uninterrupted existence of the said Grand Lodge Knights of Pythias of Georgia, defendant in error, as appears in the Printed Record, pp. 101-104.

(f) Also an extract from the constitution of the Grand Lodge Knights of Pythias of Georgia, one of defendants in error, showing government and various rules of the order. In this constitution appears the statement that "this body shall be known as the Grand Lodge Knights of Pythias of Georgia, existing by virtue of a charter duly and regularly issued by the Supreme Lodge Knights of Pythias on the 20th day of March, 1871." (Printed Record p. 95).

This documentary evidence was introduced not only for the purpose of showing the continued exist-

ence of the Grand Lodge of Georgia since 1871, but also for the purpose of showing that plaintiffs in error had copied defendants in error's constitution, statutes, emblems, name, paraphernalia, and insignia.

2. *Oral Evidence.*

(a) M. M. Hill, sworn in behalf of defendants in error, states that he is, and has been since 1873, a member of the Order of Knights of Pythias of which J. H. Rathbone was the founder, and that he has been continuously a member of the lodge into which he was initiated, Vigilant Lodge No. 2, up to the time of the hearing of the case in the trial court; that he became a member of the Grand Lodge of Georgia in 1879, and that the Grand Lodge of defendants in error was organized prior to that time. (Printed Record p. 60).

(b) E. P. Burns, in addition to testifying to the common use of words, letters and insignia by plaintiffs in error with defendant in error, says that he became a member of one of the lodges in Atlanta in 1890, and has continued until the time he gave his evidence, and that said Capital City Lodge, belonging to the Grand Lodge of Georgia, was instituted in October, 1886. (Printed Record p. 63).

VI.

A CORPORATION ORGANIZED IN THE DISTRICT OF COLUMBIA UNDER THE ACT OF MAY 5, 1870, IS NOT DIFFERENT FROM ANY CORPORATION ORGANIZED UNDER THE LAWS OF ANY STATE BUT IS WHAT IS ORDINARILY CALLED A "FOREIGN" CORPORATION WHEN IT SEEKS TO DO BUSINESS IN ANOTHER STATE.

Article 1, Sec. 8, Paragraph 16, United States Constitution, provides that Congress shall exercise "exclusive jurisdiction in all cases whatsoever over such District, not exceeding ten miles square, as may by cession of particular states and the acceptance of Congress become the seat of government." Under this provision of the constitution, Congress is towards the District of Columbia what a Legislature is towards a state.

Thompson on Corporations, Second Edition, Vol. 1, Sec. 138, under the head "Corporations of the District of Columbia," uses the following language: "The franchises which Congress, acting as a local Legislature for the District, may confer on a corporation, beyond the franchise to exercise the powers which a natural person exercises without special authorization, are probably co-extensive with those it may confer on a natural person. Congress probably can not create a corporation within the District of Columbia and confer upon it power to act within the states without their consent, unless such corporation is, according to Marshall's Rule, an appro-

priate means to carry into execution the enumerated powers of Congress, acting as a natural Legislature. But Congress may permit a corporation of the District to act within the states, just as any state may permit a domestic corporation to act beyond the state limits. A corporation acts beyond the territory of the sovereign creating it, only by comity. The states generally permit corporations of the District to act within their limits as foreign corporations."

In the case of Stoutenburgh v. Hennick, 129 U. S. p. 141, it was decided that the authority conferred on Congress by paragraph 8 of Article 1 of the U. S. Constitution "to make all laws which shall be necessary or proper for carrying into execution" the power "to exercise exclusive legislation in all cases whatsoever over" the District of Columbia, Congress may constitute the District of Columbia a body corporate for municipal purposes, but it can only authorize it to exercise municipal powers. In this decision, it was held that the District of Columbia, through its Legislative Assembly, could not pass an act of an interstate commerce character; in other words, that Congress could not delegate such powers to the District of Columbia.

In the case of Daley et al., v. National L. I. Co. of the U. S. A. 64 Ind. p. 1, it was held that Congress constituted the Legislature of the District of Columbia.

Williams v. John A. J. Creswill et al., 51 Miss. p. 817.

VII.

PLAINTIFFS IN ERROR PETITIONED FOR CHARTER AS INDIVIDUALS, NOT AS MEMBERS OF ANY CORPORATION. THEY HAD NO AUTHORITY FROM THEIR SOCIETY OR CORPORATION TO WHICH THEY CLAIM ALLEGIANCE.

(a) *They could not come petitioning successfully as a corporation.* If Creswill et al., making a petition for a legal incorporation of plaintiffs in error's Grand Lodge of Georgia, came as a corporation, the doctrine of Paul *v.* Virginia, 8 Wall. 168, applies. One clause of this decision states that "whenever a corporation makes a contract," (and the charter granted by plaintiffs in error's Supreme Lodge to plaintiffs in error was of the nature of a contract (Printed Record p. 138), "it is the contract of the legal entity, the artificial being created by the charter, and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a State."

But plaintiffs in error *never made their Supreme Lodge party to the proceedings in the court below* and they were debarred from claiming that "full faith and credit" had not been given in Georgia, as provided for in Article 4, Sec. 1 of the U. S. Constitution, because the state "*may exclude the foreign corporation entirely;* they may restrict its business to particular localities; they may exact such security

for the performance of its contracts with their citizens as will in their judgment best promote the public interests. The whole matter rests in their discretion." (Paul *v.* Va., 8 Wall. 168).

Neither can plaintiffs in error claim any abuse of their rights under the 14th Amendment because plaintiffs in error, claiming rights as a corporation, can not claim rights as a citizen, because corporations are not citizens within the meaning of the 14th Amendment. (Paul *v.* Va., 8 Wall. 168).

It is contended by plaintiffs in error (page 8 of Supplemental Brief) "that the ultimate authority of both the parent body and this Grand Lodge (referring to plaintiffs in error) to exist and use the name they are using is to be found in the Statute of the United States," doubtless referring to the Statute of Congress of May 5, 1870, under which plaintiffs in error's Supreme Lodge was organized as a corporation, has not been fully recognized; that "full faith and credit" has not been given in Georgia to said act as provided for by Article 4, Sec. 1, of the U. S. Constitution.

But, in addition to argument formerly made, in so far as plaintiffs in error came into Georgia as a foreign corporation it has been held that "the recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states; a comity which has never extended where the existence of the corporation, or the exercise of its powers, are prejudicial to their interests, or repugnant to their policies. Having no absolute right of recognition in other states, but depending for such recognition and

enforcement of its contracts upon their consent, it follows as a matter of course that such consent may be granted upon such terms and conditions as those states may think proper to impose." (Paul *v.* Va., 8 Wall. 168).

Nor does the case at bar come within the exception noted by Mr. Justice Field in the case of Pembina Consol. Min. & Mill. Co. *v.* Pa., 125 U. S. 181, in discussing with approval the case of Paul *v.* Va., because plaintiffs in error are not "employed in the business of the general government," such as the railroad or telegraph company.

Nor do plaintiffs in error's Supreme Lodge have any Federal rights other than those of a foreign corporation because it was only incorporated under an act of Congress that provided for the *"Creation of corporations within the District of Columbia by general law."* (16 State at L., Chap. 80, pp. 98-116).

Therefore, if a corporation, it came into Georgia subject to all rules and restrictions that the laws of Georgia chose to place on it, it being remembered that the Supreme Lodge of plaintiffs in error was not a party to any of the litigation in Georgia.

(b) *Whether plaintiffs in error came into the Georgia Courts asking for incorporation as foreign or Federal corporation, or as a sort of cestui que trust of the rights of a Federal corporation, their petition for incorporation under the laws of Georgia was a petition of individuals.* (Printed Record p. 29). It was the petition of Charles D. Creswill et al., asking for incorporation as individuals and not as a corporation. There is no allegation in their petition for incorporation that they come petitioning

as a corporation (Printed Record pp. 29 and 30) so that the moment they came into Court asking for a charter to do business under the laws of Georgia, they left behind them any and all rights that distinguished them from any other class of citizens. In other words, they came as individuals and not as members of a foreign corporation. (Creswill et al., *v.* Knights of Pythias, 133 Ga. 838). The petition sets forth that the object of petitioners was to be incorporated as a Georgia benevolent corporation, with the usual powers of such corporations, alleging in said petition that their principal place of business "should be in Atlanta, Fulton County, or in whatever county in said state wherein the chief officer of said Grand Lodge (organized under said charter petitioned for), who shall be ex-officio the chief officer of said corporation, may reside." Said petition for incorporation contained no reference to the Supreme Lodge Knights of Pythias of North and South America, etc., and no reference to its alleged Supreme Lodge's organization, and no reference to any act of Congress. (Printed Record pp. 29, 30).

VIII.

FINALLY.

The plaintiffs in error say in one breath that there is nothing of property or property right in a name, and in another breath they say that defendant in error is seeking to "practically confiscate their property because it has become valueless" (main

brief for plaintiffs in error, p. 38), if they are no longer permitted to infringe the name of the defendants in error. They admit in the supplemental brief (page 12) that defendant in error may successfully assert their right to the exclusive use of the name, if the defendant in error could "identify themselves with, and show that they are the successors of that corporation," to-wit, the corporation first incorporated in the District of Columbia on August 5, 1870, pursuant to the Act of Congress of May 5, 1870. We submit that the record abundantly and conclusively shows that the Supreme Lodge Knights of Pythias, one of plaintiffs in the trial court, is not only identified with, but is identical with the said corporation of August 5, 1870, and not merely the successor of that corporation, but is that same corporation, reincorporated from time to time in terms of the law, and its original charter rights preserved and extended and enlarged in the manner provided by law, and that the Grand Lodge Knights of Pythias, defendant in error, has been continuously in existence since 1871, using its present name, insignia, paraphernalia, and all other rights given to it by its Supreme Lodge, Knights of Pythias.

The defendants in error are not seeking to abolish the society to which the plaintiffs in error belong, but only to compel that society to change its name, not the purpose of the organization, nor to stop the work in which it is engaged, but merely to desist from infringing the corporate and fraternal society name and insignia of defendant in error: all of which is clearly shown by the decree entered.

We respectfully submit that the judgment of the Court below should be affirmed; and that if it should

appear that the Supreme Lodge, Knights of Pythias, which had final decree (Printed Record pages 45, 51) rendered in its favor in the trial court but which was neither named in the bill of exceptions from the trial court to the supreme court of Georgia, nor named in the writ of error and was not named in the citation to appear in this court, but was served with copy of citation (Printed Record, page 2), is defendant in error in this court, that the judgment of affirmance of this court be so framed as to include said Supreme Lodge Knights of Pythias.

But if it should be made to appear that the said Supreme Lodge Knights of Pythias, which had final decree (Printed Record, pp. 45, 51) rendered in its favor in the trial court, but which was not named in the bill of exceptions (Printed Record, p. 18), from the trial court to the supreme court of Georgia and was not named in the writ of error from the Supreme Court of the United States to the Supreme Court of Georgia, and was not named in the citation to appear in this court, *but was served with citation to appear in this court, was not party defendant*, it is respectfully suggested, *amicus curiae*, that the judgment of this court be so framed as to show that the decree obtained by it in the trial court against plaintiffs in error in this court *was a final and binding decree*.

We further submit that if it should be made to appear that Nickerson, et al., parties plaintiff in the trial court (Printed Record, p. 21), who had final decree (Printed Record, pp. 21 and 51) rendered in their favor in the trial court but who were not named in the bill of exceptions (Printed Record, p. 18), from the trial court to the Supreme Court of Georgia, but were, as is contended, erroneously named in

the writ of error from the Supreme Court of the United States to the Supreme Court of Georgia, and were named in citation and service of citation to appear in this court (Printed Record, p. 2), *is* defendant in error in this court, that the judgment of this court be so framed as to include said Nickerson et al.

But if it should be made to appear that the said Nickerson et al. which had final decree (Printed Record, pp. 21 and 51), rendered in their favor in the trial court, but who were not named in the bill of exceptions (Printed Record, p. 18), from the trial court to the Supreme Court of Georgia, but were, as it is contended erroneously named in the writ of error from the Supreme Court of the United States to the Supreme Court of Georgia, and were named and *cited to appear in this court, were not parties defendant in this cause,* it is respectfully suggested, amicus curiae, that the judgment of this court be so framed as to show that the decree obtained by them in the trial court against plaintiffs in error in this cause, was a final and binding decree.

JOHN P. ROSS,
HAMILTON DOUGLAS,
Attorneys for defendant in error.

CRESWILL *v.* GRAND LODGE KNIGHTS OF PYTHIAS OF GEORGIA.

ERROR TO THE SUPREME COURT OF GEORGIA.

No. 235. Argued May 2, 3, 1912.—Decided June 10, 1912.

Where defendant sets up the claim that it enjoys right or privilege sought to be enjoined under authority of an act of Congress and the state court denies the right, the judgment is reviewable here under § 237 of the new Judicial Code (§ 709, Rev. Stat.).

Whether persons have a right to be incorporated in a State as a state branch of an organization incorporated in the District of Columbia under an act of Congress is a non-Federal question.

Quære: Whether the principles applicable to use of trade-marks and trade-names are applicable to the use of names of fraternal organizations having a main organization with branches in the several States.

The doctrine of laches applies to the use of a name of a fraternal corporation and equity will not grant relief against the use of the name by parties who have been using it for many years without objection, at the instance of the older organization, there not appearing to be any fraud or intent to deceive the public.

While this court does not as a general rule review findings of fact of the state court on writ of error, where a Federal right has been denied as a result of a finding of fact and it is contended there is no evidence to support that finding and the evidence is in the record, the resulting question is open for decision; and where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to require the facts to be analyzed and dissected so as to pass on the Federal question this court has power to do so.

In this case *held* that:

There was no evidence to support a finding that the defendants below were attempting by their application for incorporation in a State to use the name Knights of Pythias so as to deceive the public and work pecuniary damage to the older organization of that name, the complainant.

The long-continued acquiescence of the older organization of the Knights of Pythias in the use of the name by the junior organization prior to the attempt of the latter to have this par-

ticular state branch incorporated amounted to laches and under such conditions equity could not grant relief.

The existence of laches in this case is incompatible with a finding of injury to property and deceit to the public.

133 Georgia, 837, reversed.

THE facts, which involve the right of two associations to use the name "Knights of Pythias" and to be incorporated thereunder in one of the States, are stated in the opinion.

Mr. Alton B. Parker and *Mr. C. L. Pettigrew*, with whom *Mr. Samuel A. T. Watkins* was on the brief, for plaintiffs in error:

Defendants in error are not entitled to the relief sought, on account of their own acquiescence in the use by the plaintiffs in error of the name under which they were chartered. They could have made the question in 1880, when the first lodge was organized, and subsequently in 1886, when the first subordinate lodge was organized in Georgia, and in 1889 when the charter was granted under the same law that granted the charter of the defendants in error, all of which were done in the open and with the knowledge of the defendants in error, who uttered no word of complaint for over a quarter of a century or until the application for a charter was made in 1906.

No principle in equity is better established than that the right of action is lost by laches.

In *Ancient Order of United Workmen* v. *Graham*, 96 Iowa, 592; *S. C.*, 31 L. R. A. 113, a lapse of ten years was held to bar a benevolent association from an injunction. See also, Thompson on Corporations, 8192, 8196; Bacon on Benefit Societies, 1904, § 48A; *Burke* v. *Bishop*, 144 Fed. Rep. 838.

For other cases in which the right to enjoin was lost by laches, see *Grand Hive L. O. M.* v. *Supreme Hive L. O. M.*, 97 N. W. Rep. 779; 9 N. W. Rep. 26; 88 N. W. Rep. 882; *Holt* v. *Parsons*, 118 Georgia, 895; *Walker* v. *Phillips*,

120 Georgia, 728; *Reynolds* v. *Martin*, 116 Georgia, 495; *Hollingshead* v. *Bank*, 104 Georgia, 250; *Marshall* v. *Means*, 12 Georgia, 61; *Atkins* v. *Hill*, 7 Georgia, 573; *Waterlot Co.* v. *Bucks*, 5 Georgia, 315; *City of Elberton* v. *Pearl Mills*, 123 Georgia, 1; *Whitley* v. *James*, 121 Georgia, 521; *McWhorter* v. *Cherry*, 121 Georgia, 541; *Cole* v. *Burke*, 35 Georgia, 280; *Knox* v. *Yow*, 91 Georgia, 367.

As to the doctrine of laches, no arbitrary rule exists, but the question is decided upon the circumstances of each case. 16 Cyc. 152, and cases cited.

Lapse of time alone, and together with circumstances, especially circumstances injuring the defendant, preclude relief. Prejudice to defendant precludes relief where the change in circumstances is due to the voluntary act of defendant, or the result of delay itself. If plaintiff sleeps on his rights until the progress of events and change of circumstances render it impossible to grant relief with equal justice to defendants, he is guilty of laches. 16 Cyc. 162, and cases cited; *Prince Metallic Paint Co.* v. *Prince Mfg. Co.*, 57 Fed. Rep. 938; *Boston Rubber-Shoe Co.* v. *Boston Rubber Co.*, 149 Massachusetts, 436; *Colonial Dames* v. *Colonial Dames*, 60 N. Y. Supp. 302; *S. C.*, 173 N. Y. 586; *Richards* v. *McKall*, 124 U. S. 183; *Sullivan* v. *Portland R. Co.*, 94 U. S. 806.

Mr. Hamilton Douglas and *Mr. John P. Ross* for defendants in error.

Mr. Chief Justice White delivered the opinion of the court.

A secret fraternal and benevolent order known as the Knights of Pythias was organized as a voluntary association in Washington, District of Columbia, in 1864. Pursuant to the authority conferred by an act of Congress approved May 5, 1870 (16 Stat. 98, c. 80), authorizing the formation of corporations in the District of Columbia,

the persons composing the Supreme Lodge, the governing body of the order, became incorporated as the Supreme Lodge Knights of Pythias by filing in the proper office the certificate required by the act. Among other things required to be stated in the certificate was the name or title by which the society was to be known in law and the particular business and objects of the society. The statute provided that upon the filing of the certificate the persons signing and acknowledging the same, and their associates and successors, "shall be a body politic and corporate, by the name stated in such certificate; . . ." The life of the corporation thus created, it would seem, expired by limitation in 1890. On June 29, 1894 (28 Stat. 96, c. 119), however, by a special act of Congress, the Supreme Lodge was again made a corporation of the District of Columbia by the name of the Supreme Lodge Knights of Pythias, and still exists as such. Membership in the order is restricted to white males. In addition to a Grand Lodge and subordinate lodges in each State to which it has been extended, the order conducts an insurance branch known as the Endowment Rank and a military branch known as the Uniform Rank. The Grand Lodge of Georgia was instituted by the Supreme Lodge on March 20, 1871.

An order of Knights of Pythias of the same general nature as that above described, consisting of members of the colored race, was established in Mississippi on March 26, 1880. It became a corporation of the District of Columbia on or about October 10, 1889, by virtue of the general incorporation act of Congress of May 5, 1870, already referred to, under the name and style of "The Supreme Lodge Knights of Pythias, North and South America, Europe, Asia and Africa." The order was introduced into Georgia in June, 1886, and a Grand Lodge was instituted in that State by the Supreme Lodge on December 15, 1890. The corporation of October 10, 1889,

was reincorporated December 14, 1903, under the same general law of May 5, 1870, by the name of "Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia." After such reincorporation, on January 15, 1905, the Supreme Lodge issued a new charter to the Grand Lodge of Georgia.

The Supreme Lodge of Knights of Pythias which as heretofore stated was finally incorporated in 1894 by special act of Congress, the Grand Lodge of Georgia, which was subject to its jurisdiction, and the officers of such Grand Lodge were parties complainant in an amended petition in this litigation commenced in the Superior Court of Fulton County, Georgia. The defendants were the officers of the Grand Lodge in Georgia of the other body, who had made application to the court in which this suit was commenced to be incorporated as a domestic corporation of Georgia under the name and style of "The Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, jurisdiction of Georgia." The petition filed in the cause recited the organization of the order of the plaintiffs substantially as heretofore stated, and the defendants were alleged to be wrongfully attempting to incorporate under a name which infringed that of plaintiffs' order, and to be unlawfully styling themselves Knights of Pythias, and to be fraudulently using the insignia, emblems, etc., of the plaintiffs' order. The averments of the petition and the amended petition as to damage sustained by the alleged unlawful acts of the defendants and their associates were stated in general terms to constitute a wrong and injury to petitioners and to the membership in Georgia and to be a fraud upon the public. The relief prayed was in substance a permanent injunction enjoining the prosecution of the application for incorporation, and the use by the defendants and the members of the subordinate lodges under their jurisdiction of the name Knights of

Pythias and of other names, insignia, emblems, etc., which would be like or a colorable imitation of those in use by the plaintiffs' order.

By their answer the defendants put the plaintiffs to proof of the material averments of the petition, set up the origin, growth and purposes of the order of which they were members and especially stated that it was confined to the "negro race and the Asiatic races." The incorporation of the order under the general incorporation act of Congress of 1870 was also averred, and the claim was made of lawful right to the use of the names, signs, symbols, emblems, insignia and the other paraphernalia adopted by the corporation, and the good faith of the corporation and all concerned in the matter was averred. It was further stated that the membership of the order in the United States aggregated 80,747 and in the State of Georgia 11,805, and that there never had been an attempt to confuse the order with that of which the plaintiffs were members and that no such confusion in fact had ever arisen or could arise, the field of operation of the orders being absolutely different. Laches of the plaintiff was pleaded in bar of any relief on the ground that the existence of the order and its operations had been publicly known and was matter of common knowledge for many years.

The case came on for hearing on a motion for preliminary injunction, and after hearing the evidence and argument of counsel the court denied an injunction and quashed a preliminary restraining order. The plaintiff took the case by a bill of exceptions to the Supreme Court of Georgia. That court in disposing of it referred to the fact that the Supreme Lodge of the order represented by plaintiffs was a corporation of the District of Columbia and that by amendment of the petition it had been joined as a plaintiff. It further stated:

"That the defendants have been operating and are

seeking to be incorporated in this State under a name which is claimed to be an infringement of the name of the plaintiff's association, and the question is involved whether and how far the plaintiff, which is a foreign corporation, might be affected by the State's granting a charter to the defendants as a domestic corporation in the name and for the purpose asked, and also whether there is a fraudulent purpose or design to so infringe."

It was next observed that "the presiding judge should have enjoined the defendants from obtaining the charter applied for, so as to preserve the status in respect thereto until, on final jury trial, all of the questions of law and fact can be fully adjudicated." The court held that error had been committed in refusing to grant an injunction as to the charter applied for," and the "ruling of the Chancellor denying the injunction in other matters" was allowed "to stand until the final trial or further order of court, leaving open all the other questions for future determination." 128 Georgia, 775. There followed a hearing of the case before the court and a jury, and evidence, both oral and documentary, was introduced. The evidence showed, without contradiction, that in addition to being incorporated as stated in the answer, the defendant order had also organized on May 24, 1905, as a fraternal beneficial association by its corporate name under the insurance laws of the District of Columbia; that the laws enacted by the order were such as were common to a fraternal body; that the rituals of the order and its emblems, flags, badges, pins and jewelry adornment were on public sale free to be purchased by anyone; that the membership of the order throughout the United States aggregated 300,000; that there had been collected and disbursed to the members of the order between July 1, 1906, and July 1, 1907, more than $500,000; that the collections in Georgia during the existence of the order there aggregated $180,232.21; that there had been paid

to the widows and orphans of deceased members in Georgia $148,680, and that the collections in Georgia aggregated $51,000 a year, excluding the expense of burying their dead which was $9,000 more. After instructing the jury as to the law deemed to be applicable and observing that the case was of a character wherein the law provided that questions might be propounded to be answered by the jury, such answers to stand as their verdict, the court submitted fourteen questions to be answered by the jury. The questions, with the answers given, are copied in the margin.[1]

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[1] (*Questions & Verdict.*)

GEORGIA, *Fulton County:*

(1) Is the proposed corporate name of the defendants an infringement on the name of the plaintiff's association?

Yes.

(2) If it is such an infringement would it affect or injure plaintiff in any property right? If so, what?

Yes, in name.

(3) If so, is there any fraudulent purpose or design to (in?) so infringing?

Yes, there is.

(4) Are any of the emblems or insignia of defendants the same as any of those used by plaintiffs, and if so, does such use injure plaintiff in any property right?

Yes.

(5) Has the plaintiff acquiesced in the use by defendants of the name and insignia, &c., and if so, how long?

No.

(6) Is it true that since the organization of the Order represented by petitioners and its introduction into the State of Georgia, it has been called the Order of Knights of Pythias, and that its members have been known as Knights of Pythias or Pythian Knights indifferently?

Yes.

(7) Is it true that "Pythias" is the distinctive word in the name of the Order represented by petitioners, which ordinarily distinguishes it from the name and style of other fraternal orders in the State of Georgia and in the United States?

Yes.

(8) Is it true that the name set forth in defendants' petition for in-

Subsequently a final decree was entered granting the relief prayed by the complainants. A copy of the decree is excerpted in the margin.[1]

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corporation is substantially identical with the name and style of your petitioners the Grand Lodge Knights of Pythias of Georgia?

Yes.

(9) Is it true that the name set forth in defendants' said petition for incorporation is a colorable imitation of the name and style of your petitioner, the Grand Lodge Knights of Pythias of Georgia?

Yes.

(10) Is it true that the use by defendants and their associates of the name which they are seeking incorporation would work a fraud upon your petitioners and their associates and the public, in that the name under which defendants propose to incorporate is a colorable imitation of the name of petitioners?

Yes.

(11) Is it true that defendants can not show any organization of any kind until 1880, and until long after the Grand Lodge Knights of Pythias of petitioners was organized in the State of Georgia?

Yes.

(12) Is it true that the use of the word "Pythias" immediately in conjunction with the words "Knights of" in the name under which defendants and their associates are seeking incorporation is a colorable imitation of the name of your petitioner, the Grand Lodge Knights of Pythias of Georgia?

Yes.

(13) Is it true that defendants of the "Supreme Lodge of the Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia" are wearing emblems and insignia identical in color, design and lettering with the emblems and insignia of petitioners, the Grand Lodge Knights of Pythias of Georgia; and is it true that the wearing and use of such insignia and emblems work a fraud upon either petitioner or their associates or the public?

Yes.

(14) Have the defendants used the name Knights of Pythias or the letters K. of P. without any affix or suffix thereto?

Yes.

May 27, 1908. G. W. FOOTE, *Foreman.*

[1] (*Final Decree.*)

GEORGIA, *Fulton County:*

Upon considering the pleadings, evidence and verdict in the above-

Reciting that they were dissatisfied with the verdict of the jury upon the questions submitted, the defendants moved for a new trial upon the ground that the verdict

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stated case, it is thereupon ordered, adjudged and decreed by the Court as follows:

(1) That the defendants, Chas. D. Creswill, Geo. N. Stoney, Geo. R. Hutto, N. B. Williamson, Columbus J. Smith, Fred. N. Cohen, Boss W. Warren, Geo. W. Brown, Jas. W. Davis, Edwin J. Turner, Garrett Taylor and Lucius L. Lee, and each of them and their associates, confederates and successors, be and they are hereby perpetually enjoined as in said petition prayed, and especially as follows:

A. That said defendants and their associates, confederates and successors are hereby perpetually enjoined from prosecuting their petition for incorporation, and from further proceeding to become incorporated in Fulton County, or elsewhere in the State of Georgia, under the name and style of "The Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia," or using any name or title embracing the word "Pythias" in immediate conjunction with the words "Knights of," or under any name or title in which the word "Pythias" is the distinctive and cardinal word, or under any name which is substantially identical with, or a colorable imitation of the name of the petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge Knights of Pythias of Georgia.

B. That said defendants, their associates and successors and each of them be, and they are hereby perpetually enjoined from further using in their voluntary organization said name of the Grand Lodge Knights of Pythias of North America, South America, Europe, Asia, Africa and Australia, Jurisdiction of Georgia, and in the conduct of its affairs, using any name embracing the word "Pythias" in immediate conjunction with the words "Knights of," or embracing said word "Pythias" as the cardinal distinctive word of the name or any other name which is substantially identical with or in colorable imitation of the name of the petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge Knights of Pythias of Georgia. The said defendants, their associates and successors and each of them are further perpetually enjoined from instituting subordinate lodges under the name and designation of the Order of Knights of Pythias, and from further authorizing the continued existence of subordinate lodges under the jurisdiction of said voluntary organization, of which defendants and their associates are members, using the name and designa-

was contrary to the evidence and without evidence to support it, that it was strongly and decidedly against the weight of evidence and was contrary to law and the principles of equity. Nearly six months afterwards, by leave of court, defendants amended the motion by adding thirty-six additional grounds, attacking specifically each of the

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tion of Knights of Pythias, or any name in which the word "Pythias" is the cardinal and distinctive word, or any name which is a colorable imitation of the name of petitioners, the Supreme Lodge Knights of Pythias, and the Grand Lodge Knights of Pythias of Georgia, and of subordinate lodges instituted by said petitioner's authority. And said defendants, their associates and successors, and each of them, are further perpetually enjoined from designating and calling themselves, and from authorizing their associates and members of subordinate lodges organized and existing by authority of the voluntary organization of which said defendants are members to designate and call themselves Knights of Pythias or Pythian Knights, or any other name that is a colorable imitation thereof, and from designating their voluntary organization or its subordinate lodges by the initials K. P. or K. of P., and from using a seal which is a colorable imitation of the seal of the petitioners, the Grand Lodge Knights of Pythias of Georgia, and from using and wearing emblems and insignia, buttons, pins, rings, and watch charms which in color and design are substantially similar to or a colorable imitation of the emblems and insignia, buttons, pins, rings and watch charms adopted, used and worn by the members of petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge Knights of Pythias of Georgia, and the members of the subordinate lodges organized by authority of said petitioners; and the said defendants, and each of them, their successors and associates are perpetually enjoined from authorizing or permitting the further use and wearing of such emblems and insignia by members of subordinate lodges instituted by and existing under the authority of said voluntary organization of which the defendants are officers and members.

C. That said defendants and each of them and their associates and successors be, and they are perpetually enjoined from using the words Knights of Pythias in immediate conjunction, or the word "Pythias" as the cardinal distinctive word in any name, or as a designation of any insurance, military or other branch of the voluntary organization of which said defendants and their associates are officers and members;

answers to the questions, charging each to be not only contrary to the evidence, but contrary to the charge of the court, and in addition error was alleged in the charge as given and to the failure to instruct the jury as pointed out in some of the specifications of error. The omission to specifically instruct the jury that the defendants claimed

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and from using any name, flags, emblems, and insignia that are substantially identical with or a colorable imitation of the name, flags, emblems, or insignia of petitioners, the Supreme Lodge Knights of Pythias and the Grand Lodge Knights of Pythias of Georgia, in any insurance and military branches of said petitioners, in connection with any society or corporation of which defendants are officers or members.

(2) In order that the voluntary organization of which the defendants are officers and members may have a reasonable time in which to select and adopt some other name and make such changes in the laws as may be necessary in obedience to this decree, and not hereby disorganize said organization which defendants are members of, or stop its said association from the prosecution of the work in which it is engaged:

It is hereby adjudged and decreed: That the injunction decreed in subsections B and C, paragraph one hereof, shall be in abeyance and no penalty shall be visited upon the defendants, their associates and successors, for disobedience thereof until the first day of June, 1909. And that on and after said first day of June, 1909, this suspension of said injunction shall cease and determine, and said injunction shall be of full and final force and effect, perpetually after said date, and the defendants and each of them, their associates and successors are and shall be subject to all the pains and penalties provided for any disobedience of said injunction.

(3) That this decree shall have the force and effect of the State's writ of injunction, without issuance of such writ; provided, however, that the writ of injunction, according to the terms of this decree, shall issue out of this court, and be further served upon the defendants and their associates and successors, at any time on motion of petitioners.

(4) That the petitioners have and recover of the defendants all of the costs in this behalf incurred, to wit: —— dollars, to be taxed by the clerk of this court.

In open court, this tenth of June, 1908.

J. T. Pendleton,
Judge C. S. A. C.

a right to their name under a charter from the District of Columbia by virtue of an act of Congress and the answers of the jury to certain of the questions were alleged to violate defendants' rights under the charter and to be repugnant to the due faith and credit clause of the Constitution of the United States, and the decree was alleged also to constitute a violation of the general incorporation act under which the order of which defendants were a part had been incorporated. The motion for a new trial was overruled. A bill of exceptions was soon afterwards allowed, which was certified to contain "all the evidence" and the material portions of the record. The case was then taken by a writ of error to the Supreme Court of the State, where the judgment was affirmed. 133 Georgia, 837. This writ of error was then prosecuted.

In the trial court, in various forms, plaintiffs in error, defendants below, invoked the right to the use of its corporate name and the incidental right to the designation Knights of Pythias and the use of insignia, emblems, etc., appropriate to the order. As this right or privilege was claimed in virtue of the authority to incorporate conferred by the general incorporation act of May 5, 1870, enacted by Congress, it constituted a right or privilege claimed under an authority exercised under the United States which, being denied by the state court, is reviewable here by virtue of the provisions of § 237 of the new Judicial Code, § 709, Rev. Stat. *Dupasseur* v. *Rochereau*, 21 Wall. 130; *Embry* v. *Palmer*, 107 U. S. 3; *Ferris* v. *Frohman*, 223 U. S. 424, 431, and cases cited. The fact that corporations created by the general law of 1870 and the special act of Congress of 1894 heretofore referred to derived their rights and powers under a law of the United States is recognized in the following cases which were removed from state courts: *Supreme Lodge Knights of Pythias* v. *Kalinski*, 163 U. S. 289; *Same* v. *Withers*, 177 U. S. 260, and *Same* v. *Beck*, 181 U. S. 49.

Whether or not the defendants below and their successors were entitled to prosecute in the state court the application to be made a domestic corporation of Georgia is, in our opinion, plainly a question non-federal in character, and we therefore pass its consideration. The question, however, whether the right or privilege arising from the authority exercised under legislation of Congress was invaded by the decree complained of so far as it forbade the use of the corporate name or a designation containing the distinctive words Knights of Pythias and the use of the emblems and insignia of such order being within our competency to review, we come to the consideration of the question whether the asserted right or privilege was properly denied.

It is manifest from the record that the existence within the State of Georgia of two bodies of Knights of Pythias controlled by corporations of the District of Columbia and the authority exerted over the membership in that State by the governing body of each order was not contrary to any state statute and the Supreme Court of Georgia in determining the right to relief applied what it conceived to be the applicable principles of general law. Speaking in a general sense, it is true to say that the Supreme Court of Georgia deemed the case before it to be controlled by the principles of law applicable to trademarks and trade-names, and in substance held, *a*. That an association whose primary object was fraternal or benevolent, first appropriating and using an arbitrary or fanciful name acquires an exclusive right to the same; *b*. That a subsequent unauthorized use by others of such name or a colorable imitation thereof would be unlawful; *c*. That in the absence of laches if as a result of such wrongful use injury was occasioned to the rightful owner by the unlawful appropriation and use of the name, equity would afford relief. Coming to apply these principles the court held, *first*, that there had been a lawful appro-

priation of the name by the plaintiff corporation, and an unauthorized and wrongful use thereof by the defendants, indeed, that such use was made "with a fraudulent purpose and design;" *second*, that the unlawful appropriation had inflicted injury upon the property rights of the lawful appropriator. On this subject, the court said (p. 844):

"The plaintiffs' order, while primarily fraternal and benevolent, has certain property and business attributes and activities, including the acquiring and ownership of large amounts of property and the conducting of a department of insurance protection. Under the evidence, the element of injury is sufficiently shown."

The conclusion of the court that there had been as a matter of fact no such laches as should prevent a court of equity from affording relief was thus stated (p. 850):

"Taking into consideration that the subject of controversy in this case is in the nature of a trade-name, and that the contest is between two secret societies whose relations to each other, during the period from the appropriation of the name by one to the institution of the suit for injunction by the other, was not the usual relation that one person ordinarily sustains to another, we cannot say that the finding of the jury that the plaintiffs had not acquiesced in the use of their name by the defendants is not supported by the evidence. The suit was filed promptly after the defendants came out into the open and by petition duly published asked the court to give legal sanction to their use of the plaintiffs' name."

We do not stop to consider whether the court was right under principles of general law in applying to organizations like those here involved the rules applicable to trademarks and trade-names and unfair competition in trade, a subject as to which there is conflict in the decisions, because under the view we take of the case we propose, for the sake of argument only, to indulge in the hypothesis

that the conception which the court entertained on the subject was correct. It is indisputable that the court was clearly right, as a matter of law, in holding that a court of equity in any event would not afford relief where there had been such laches as would cause it to be inequitable to do so. *Saxlehner* v. *Eisner & M. Co.*, 179 U. S. 19, 35. The question then is, Can the decree of the court be maintained consistently with the doctrine of laches which the court expounded and which we have accepted as correct beyond all controversy? As the inquiry which we thus state rests upon the premise that all the propositions of law applied by the court are to be taken as correct, it follows that there is no possibility of deciding there was material error unless it is to be found in the application which the court made of the principle of law which it applied to the facts established by the evidence, all of which is in the record in connection with the findings made by the jury. While it is true that upon a writ of error to a state court we do not review findings of fact, nevertheless two propositions are as well settled as the rule itself, as follows: (a) that where a Federal right has been denied as the result of a finding of fact which it is contended there was no evidence whatever to support and the evidence is in the record the resulting question of law is open for decision; and (b) that where a conclusion of law as to a Federal right and finding of fact are so intermingled as to cause it to be essentially necessary for the purpose of passing upon the Federal question to analyze and dissect the facts, to the extent necessary to do so the power exists as a necessary incident to a decision upon the claim of denial of the Federal right. *Kansas City So. Ry. Co.* v. *Albers Comm. Co.*, 223 U. S. 573, 591; *Cedar Rapids Gas Co.* v. *Cedar Rapids, Ib.* 655, 668; *State of Washington ex rel.* v. *Fairchild*, 224 U. S. 510. The contentions here made bring this case under the first category, since the insistence here is that there was not any evidence

justifying the findings made by the court concerning fraudulent purpose, injury to property, deception of the public, etc.

On examining the evidence we are compelled to say we do not think it has any tendency to prove an intent on the part of the defendant order by the adoption of the designation given to their body or the use of the emblems, insignia, etc., employed to make it appear that their order and that of the complainant is one and the same, or that it tends to show that the use of the corporate name or the distinctive words Knights of Pythias and the emblems, etc., of that order operated in any degree to deceive the public or to work pecuniary damage to the complainant order within or without the State of Georgia. But strong as are our convictions as to these subjects, we prefer not to rest our conclusion upon them, but rather to place the decree of reversal which we shall render, upon the application to the facts of the well-settled doctrine on the subject of laches. As we have observed, the court below in considering the facts on that subject made no reference to the evidence, but assumed that it must be that the findings of the jury were sustained by evidence and indulged in the assumption that it was natural to suppose that the long-continued existence and development of the defendant order had not been interfered with by the complainant corporation because not known until the defendants came into the open by making an application to be made a domestic corporation of Georgia. The facts, however, which we have stated concerning the establishment of the order, its lodgment in Georgia, its vast expansion, its years of duration and its volume of transactions were not disputed in any particular whatever, and therefore leave no room for any other but the legal conclusion of laches. This, we think, in the most conclusive way demonstrates the violation of the elementary principles of equity which would result from the enforcement of the in-

junction which the court awarded. And the conclusion just stated renders it unnecessary to point out the incompatibility between the holding on the one hand that there was injury to the property rights of the plaintiff corporation and a deceit of the public arising from the existence of the defendant order and its activities, and the holding on the other hand that laches cannot be imputed to the plaintiff corporation as a result of its inaction during the many years in which the defendant corporation existed and exercised its attributes and functions, because the wrongs thus being publicly inflicted could not be presumed to have been known until the defendant order came out into the open by the application for incorporation under the law of the State of Georgia.

The judgment of the Supreme Court of Georgia is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

MR. JUSTICE HOLMES with whom concurred MR. JUSTICE LURTON dissenting:

When a Federal right is held by a state court to have been lost by subsequent conduct that of itself involves no Federal question I think we are not at liberty to re-examine the decision unless we can say that the state court in substance is denying the right. So it has been held or strongly intimated as to *res judicata*, *Northern Pacific R. R. Co.* v. *Ellis*, 144 U. S. 458, estoppel, *Hale* v. *Lewis*, 181 U. S. 473, the statute of limitations, *Rector* v. *Ashley*, 6 Wall. 142, and laches, *Moran* v. *Horsky*, 178 U. S. 205, 214, 215, *Pierce* v. *Somerset Ry.*, 171 U. S. 641, and the principle was recognized only the other day in *Gaar, Scott & Co.* v. *Shannon*, 223 U. S. 468, 470, 471. I do not see the distinction by which we can review the decision in the opposite case, where it is held that the right is not lost or that it cannot be interfered with because of laches on the other side. In a case where the state court held that there

was no defense under the statute of limitations or estoppel, the writ of error was dismissed. *Carothers* v. *Mayer*, 164 U. S. 325. I will content myself with saying that I do not see how the decision can be reversed on the ground of laches.

MR. JUSTICE LURTON concurs in this view and is of opinion that the writ should be dismissed.